TO PROVIDE FOR AND APPROVE THE SETTLEMENT OF CERTAIN LAND CLAIMS OF THE BAY MILLS INDIAN COMMUNITY, AND TO PROVIDE FOR AND APPROVE THE SETTLEMENT OF CERTAIN LAND CLAIMS OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON

H.R. 2176 and H.R. 4115

MARCH 14, 2008

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FRIDAY, MARCH 14, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Johnson, Smith, Sensenbrenner, Coble, Chabot, Issa, King and Jordan.

Staff Present: Diana Oo, Majority Counsel; George Slover, Majority Counsel; Perry Apelbaum, Staff Director and Chief Counsel; Kimani Little, Minority Counsel; and Sean McLaughlin, Minority Chief of Staff and General Counsel.

Mr. CONYERS. Top of the morning, Ms. Berkley, Ms. Kilpatrick.

Ms. BERKLEY. Hi.

Ms. KILPATRICK. Hi.

Mr. CONYERS. The Committee will come to order.

This morning, we're here to consider two bills that propose to settle the land claims of two tribes from Michigan's Upper Peninsula, the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians, and allow them to establish casinos in Romulus and Port Huron, Michigan, over 350 miles away from their reservations.

[The bill, H.R. 2176, follows:]

I

110TH CONGRESS
1ST SESSION

H. R. 2176

To provide for and approve the settlement of certain land claims of the Bay Mills Indian Community.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2007

Mr. STUPAK (for himself and Mrs. MILLER of Michigan) introduced the following bill; which was referred to the Committee on Natural Resources

---

A BILL

To provide for and approve the settlement of certain land claims of the Bay Mills Indian Community.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) ALTERNATIVE LANDS.—The term "alternative lands" means those lands identified as alternative lands in the Settlement of Land Claim.

(2) CHARLOTTE BEACH LANDS.—The term "Charlotte Beach lands" means those lands in the

Charlotte Beach area of Michigan and described as follows: Government Lots 1, 2, 3, and 4 of Section 7, T45N, R2E, and Lot 1 of Section 18, T45N, R2E, Chippewa County, State of Michigan.

(3) COMMUNITY.—The term "Community" means the Bay Mills Indian Community, a federally recognized Indian tribe.

(4) SETTLEMENT OF LAND CLAIM.—The term "Settlement of Land Claim" means the agreement between the Community and the Governor of the State of Michigan executed on August 23, 2002, and filed with the Office of Secretary of State of the State of Michigan.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 2. ACCEPTANCE OF ALTERNATIVE LANDS AND EXTINGUISHMENT OF CLAIMS.

(a) LAND INTO TRUST; PART OF RESERVATION.—Upon the date of enactment of this Act—

(1) the Secretary shall take the alternative lands into trust for the benefit of the Community within 30 days of receiving a title insurance policy for the alternative lands which shows that the alternative lands are not subject to mortgages, liens,

deeds of trust, options to purchase, or other security interests; and

(2) the alternative lands shall become part of the Community's reservation immediately upon attaining trust status.

(b) GAMING.—The alternative lands shall be taken into trust as provided in this section as part of the settlement and extinguishment of the Community's Charlotte Beach land claims, and so shall be deemed lands obtained in settlement of a land claim within the meaning of section 20(b)(1)(B)(i) of the Indian Gaming Regulatory Act (25 U.S.C. 2719; Public Law 100–497).

(c) EXTINGUISHMENT OF CLAIMS.—Upon the date of enactment of this Act, any and all claims by the Community to the Charlotte Beach lands or against the United States, the State of Michigan or any subdivision thereof, the Governor of the State of Michigan, or any other person or entity by the Community based on or relating to claims to the Charlotte Beach lands (including without limitation, claims for trespass damages, use, or occupancy), whether based on aboriginal or recognized title, are hereby extinguished. The extinguishment of these claims is in consideration for the benefits to the Community under this Act.

SEC. 3. EFFECTUATION AND RATIFICATION OF AGREEMENT.

(a) RATIFICATION.—The United States approves and ratifies the Settlement of Land Claim, except that the last sentence in section 10 of the Settlement of Land Claim is hereby deleted.

(b) NOT PRECEDENT.—The provisions contained in the Settlement of Land Claim are unique and shall not be considered precedent for any future agreement between any tribe and State.

(c) ENFORCEMENT.—The Settlement of Land Claim shall be enforceable by either the Community or the Governor according to its terms. Exclusive jurisdiction over any enforcement action is vested in the United States District Court for the Western District of Michigan.

○

[The bill, H.R. 4115, follows:]

I

110TH CONGRESS
1ST SESSION

H. R. 4115

To provide for and approve the settlement of certain land claims of the Sault Ste. Marie Tribe of Chippewa Indians.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 2007

Mr. DINGELL (for himself and Mr. STUPAK) introduced the following bill; which was referred to the Committee on Natural Resources

---

A BILL

To provide for and approve the settlement of certain land claims of the Sault Ste. Marie Tribe of Chippewa Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACCEPTANCE OF ALTERNATIVE LANDS AND EXTINGUISHMENT OF CLAIMS.

(a) DEFINITIONS.—For the purposes of this Act, the following definitions apply:

(1) ALTERNATIVE LANDS.—The term "alternative lands" means those lands identified as alternative lands in the Settlement of Land Claim.

(2) CHARLOTTE BEACH LANDS.—The term "Charlotte Beach lands" means those lands in the Charlotte Beach area of Michigan and described as follows: Government Lots 1, 2, 3, and 4 of Section 7, T45N, R2E, and Lot 1 of Section 18, T45N, R2E, Chippewa County, State of Michigan.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(4) SETTLEMENT OF LAND CLAIM.—The term "Settlement of Land Claim" means the agreement between the Tribe and the Governor of the State of Michigan executed on December 30, 2002, and filed with the Office of Secretary of State of the State of Michigan.

(5) TRIBE.—The term "Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians, a federally recognized Indian tribe.

(b) LAND INTO TRUST; PART OF RESERVATION.—

(1) LAND INTO TRUST.—The Secretary shall take the alternative lands into trust for the benefit of the Tribe within 30 days of receiving a title insurance policy for the alternative lands which shows that the alternative lands are not subject to mortgages, liens, deeds of trust, options to purchase, or other security interests.

(2) PART OF RESERVATION.—The alternative lands shall become part of the Tribe's reservation immediately upon attaining trust status.

(c) GAMING.—The alternative lands shall be taken into trust as provided in this section as part of the settlement and extinguishment of the Tribe's Charlotte Beach land claims, and so shall be deemed lands obtained in settlement of a land claim within the meaning of section 20(b)(1)(B)(i) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(B)(i)).

(d) EXTINGUISHMENT OF CLAIMS.—Upon the date of enactment of this Act, any and all claims by the Tribe to the Charlotte Beach lands or against the United States, the State of Michigan or any subdivision thereof, the Governor of the State of Michigan, or any other person or entity by the Tribe based on or relating to claims to the Charlotte Beach lands (including without limitation, claims for trespass damages, use, or occupancy), whether based on aboriginal or recognized title, are hereby extinguished. The extinguishment of these claims is in consideration for the benefits to the Tribe under this Act.

(e) EFFECTUATION AND RATIFICATION OF AGREEMENT.—

(1) RATIFICATION.—The United States approves and ratifies the Settlement of Land Claim.

(2) NOT PRECEDENT.—The provisions contained in the Settlement of Land Claim are unique and shall not be considered precedent for any future agreement between any Indian tribe and State.

(3) ENFORCEMENT.—The Settlement of Land Claim shall be enforceable by either the Tribe or the Governor according to its terms. Exclusive jurisdiction over any enforcement action is vested in the United States District Court for the Western District of Michigan.

○

Mr. CONYERS. Concerns have been raised about the legitimacy and the fairness of these land deals.

First, these bills would drastically change how casinos can be approved, not just in Michigan but all over the country. Under existing Federal law, the Department of the Interior determines whether to take off reservation land into trust for an Indian tribe to use to run casino gaming after carefully considering numerous criteria and giving special scrutiny if the new land is farther—quote, farther—thank you, Mr. Sensenbrenner. We appreciate that—and if—quote,if the new land, is quote, farther than a commutable distance from the reservation. End quotation.

Without these constraints, there would seem to be no limit to how far Indian gaming could be spread, which would be far beyond reasonable bounds.

These bills would also alter central provisions of the 1993 compacts that both these tribes signed with the State of Michigan. Circumventing these and other existing legal processes could set a very bad precedent. The Sault Tribe itself acknowledge as much in the 2002 congressional testimony regarding the same claim before it became a party to it.

I am also troubled by the fact that these bills would overturn the express wishes of the residents of Michigan.

In 1994, they passed a State-wide referendum to allow three and only three private casinos to be built in the State and in the City of Detroit.

In 2004, they passed another State-wide referendum to strictly limit the expansion of private gaming in Michigan. Any new private gaming facility must be approved by both a local and a Statewide vote. This referendum would still allow the city support hearing in Romulus to pursue casinos, but they would have to do exactly what the City of Detroit did, one, get the approval of the voters in the State of Michigan.

Both cities have already passed local referendums, so they are already half way there, in a manner of speaking, but they need to go the full distance.

And then, finally, authorizing the casinos in Port Huron and Romulus in this fashion would unfairly disadvantage the city of Detroit, to put it mildly. The city has suffered from a sharp decline in the number of manufacturing jobs over the last decade. The great people of the city have been working extremely hard in recent years to improve its economy and increase its competitiveness.

Our efforts have brought visible signs of economic progress. The city has attracted new hotels, luxury condominiums and new construction going on over all parts of the city. It has built employment training centers and new housing projects. It has succeeded in convincing major regional employers to move their headquarters into downtown Detroit.

A crucial precursor to all these developments was the establishment of the three casinos in the city. A few months ago, MGM Grand opened a new $800 million hotel and casino. Undoubtedly, MGM would probably not have made that kind of investment if it knew that Congress would be considering shoehorning in additional casinos right outside its borders.

The three casinos have provided over $1 billion thus far in taxes and percentage payments. The city also has received another $100 million in municipal service fees. This revenue allows the city to invest in critical infrastructure and services for its residents.

In addition to being a good source for revenue for the city, the casino employs nearly 8,000 residents. These are well-paying jobs. Most of them are union and have brought tremendous health care benefits to people who were in desperate need of quality health care coverage.

So let's have a discussion about the issue before us this morning. The Judiciary Committee will be addressing these concerns and will be taking your recommendation quite seriously.

Between the two distinguished Members of Congress, which one would like to precede the other?

Ms. KILPATRICK. Thank you, Mr. Chairman. I would proceed first, if that is okay with the Chair.

Mr. CONYERS. All right and that meets with the approval of the gentlelady from Nevada, I presume.

Ms. BERKLEY. Absolutely.

Mr. CONYERS. Turn your mic on. Caroline.

Ms. BERKLEY. Okay. Did I get it? Yes.

Mr. CONYERS. Yes.

Carolyn Kilpatrick distinguished Member of the Appropriations Committee, a former State legislator herself and the Chair of the Congressional Black Caucus—may I just interrupt myself for a moment?

Lamar Smith has agreed to make his opening statement now so that we get a fuller picture of the view of the Members of the Committee. The distinguished Ranking Member from Texas is recognized.

Mr. SMITH. Thank you, Mr. Chairman, and I always appreciate your graciousness. I only hope I'm not interfering or disrupting too much, but it is nice to be on the same side.

I join Chairman Conyers in opposing these bills, H.R. 2176 and H.R. 4115. I share Chairman Conyers' concerns with these bills, but I oppose them for other reasons as well.

These bills transfer land from the State of Michigan to two Indian tribes. The tribes will be allowed to use this land to build casinos or other gaming establishments. I am concerned that building more casinos will turn more people into compulsive gamblers and lead to higher crime rates.

The link between gambling and crime is real. A 2004 study by the Department of Justice indicated that more than 30 percent of pathological gamblers studied committed a robbery within a year of their arrest. The study also stated that nearly one-third of those arrested admitted they committed the robbery to pay for gambling or gambling debts.

In addition, the same study found that 13 percent of those studied said they had assaulted someone to get money. According to the study, 25 percent of those assaults were related to gambling.

Even proponents of Indian gambling admit the limitations of legalized gambling.

Although casinos do bring some economic benefit to many impoverished Native American communities, some tribes have found that

gaming is not a silver bullet for their overwhelming needs. The progaming National Congress of American Indians states, "Even after the advent of gaming, Indian reservations continue to have a 31 percent poverty rate and a 46 percent unemployment rate." They also note Indian health and education statistics are among the worst in the country.

Further, these bills circumvent the well-established Department of Interior process to evaluate the environmental impact of a land transfer before approval. This Committee should ensure that established procedures are followed in every instance.

Mr. Chairman, I am opposed to legislation—this legislation that, in my judgment, would in lead to increased gambling. And I share the Chairman's concerns and I join him, as I say, in opposing these bills, and I certainly will encourage my colleagues to do the same.

Mr. Chairman, thank you again for yielding me time to make this opening statement.

Mr. CONYERS. Thank you very much, Lamar Smith.

Could I call on a senior Member of the Committee, Howard Coble of North Carolina, and ask if he wanted to welcome our congressional witnesses or make any comments about the subject matter?

Mr. COBLE. Thank you, Mr. Chairman. I'm sure you and the distinguished Ranking Member have adequately and appropriately addressed the issue.

Welcome to our colleagues, and I yield back.

Mr. CONYERS. May I invite Steve King, the gentleman from Iowa, to make any comments or welcoming remarks to our congressional witnesses?

Mr. KING. I thank our genteel Chairman for offering me the opportunity.

I would like to welcome our witnesses to the panel.

Sometimes I find myself on the privilege of sitting on the other side of this thing, and I want to state that I'll maintain that level of collegiality that we maintain here on the panel with the witness, and I look forward to your testimony.

I thank you, and I yield back.

Mr. CONYERS. Thank you very much, Steve.

I was introducing Carolyn Kilpatrick, my distinguished colleague from the Detroit area, who has been an outstanding State legislator, an activist in the civil rights struggle and a distinguished Member of the Appropriations Committee. We have your statement, and all statements will be put in the record, both of Members and witnesses. So I ask Chairwoman Kilpatrick, who is, additionally, the Chair of the Congressional Black Caucus, 43 members strong, and invite her for her recommendations and views on the subject matter that bring us here today.

TESTIMONY OF THE HONORABLE CAROLYN C. KILPATRICK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Ms. KILPATRICK. Thank you, Mr. Chairman, Ranking Member Mr. Smith, thank you very much, and Members of the Committee.

Thank you, first of all, for holding the hearing. I started in Resources, the head of a full Subcommittee hearing as well as a full

Committee hearing, and I'm happy that Judiciary is continuing your responsibility to look at these bills.

You have my full statement, and thank you for putting it in the record. I will summarize briefly.

We oppose these bills for a number of reasons.

Twenty years ago, the City of Detroit, under the leadership of Mayor Coleman Young, begin the journey to bring casinos to Detroit. We lost two local referendums before we finally won a local referendum and then went to the State Capitol where we did win another referendum and allowed three casino companies to build in my district all three casinos. They are now operating. Two have now built temporaries and are now moving on to permanent sites.

And, as the Chairman mentioned, MGM has built a permanent site, over $800 million, that just opened a couple of weeks ago. They have been good neighbors, good citizens; and because of the city's action, because of the State legislature's passing legislation in 2004 and 1994 that said, yes, you can go ahead, yes, these would be the only casinos in this State, and if a community wanted to build a casino there are steps they had to follow as well, local referendum, back to the legislature and so forth.

This bill will circumvent all of that. These are dangerous bills and a precedent that I don't think this Congress wants to set. It really is opposing Michigan law, as I just explained to you. It is controversial among the Native American tribes in our State. There are 12 tribes, 12 tribes opposing this legislation and only 2 supporting and, I might mention, the 2 that are going to be helped if this happens.

The city would lose thousands of jobs. Major investments from the people who have been with us for the last 10 years who built the temporaries and now the permanent casinos will be certainly at a loss.

This new casino—one of them is 15 minutes from the three that we already have in Michigan, plus one across the river in Canada. For the reasons that Ranking Member Smith mentioned—and I don't gamble. It's legal, but I don't, and I don't want anybody I love to gamble. It is a terrible habit to get in. And I get calls in my office all the time from children about parents, grandparents about sons and daughters and all of that. Four casinos within 10 miles of each other is more than enough for two-thirds of the population from Michigan lives in my area, and these casinos serve them well.

The Bureau of Indian Affairs already rejected this matter. The Interior Department is being looking at the matter still. I don't think we should circumvent their authority. They are the rightful people to do. Indian Affairs has already rejected it, Interior is looking at it, and, on top of all of that, it is very uncertain.

And you will hear from the ancestral tribe whose land this is that this may be reservation shopping, an illegal deal. And I'm sure this Congress does not want any more illegal actions coming to us from something that might not be just sound enough.

So I would urge the Committee to take your time to look at it closely for all the reasons that both the Chairman and the Ranking Member already discussed, that we look and take our time with a bill I am still opposing for the reasons that have been mentioned. Eight thousand jobs have been created, over a billion dollars in our

area, sorely needed at a time when manufacturing in America, let alone in Michigan, has been decimated.

So, thank you, Mr. Chairman and Members of the Committee. We hope you will oppose these bills, and I yield back the balance of my time.

Mr. CONYERS. Thank you very much, Carolyn Kilpatrick. You are getting us off to a very good and fast start. I don't know what Shelly Berkley is going to say about one part of your comments, but we will soon find out.

Since our two congressional witnesses are under the same time constraints as we are and there will not be questions asked of them, if you want to leave now or whenever you want to leave—you are welcome to stay here as long as you can, but you are also able to leave. We're grateful for your testimony.

[The prepared statement of Ms. Kilpatrick follows:]

PREPARED STATEMENT OF THE HONORABLE CAROLYN C. KILPATRICK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Chairman Conyers, Rahall, Ranking Minority Member Smith, and Members of the House Judiciary Committee:

Thank you for holding this hearing today. I also want to thank Chairman Conyers, Ranking Minority Member Smith, and Speaker Pelosi for allowing these bills to be consecutively referred so that the Judiciary Committee can do their due diligence on these bills. In essence, both of these bills will allow two Native American tribes located in Michigan's Upper Peninsula to build casinos 350 miles from their reservations and near the City of Detroit.

My reasons for opposing these bills, which will allow land to be taken into trust for gambling purposes for the settlement of proposed land claims, are actually very simple. These bills set a dangerous precedent for Congress; they contravene Michigan state law; they are very controversial among the Tribes in Michigan and throughout Indian Country; it is not clear that these land swaps are valid; and finally, Congress has not had a comprehensive review of the Indian Gaming Regulatory Act (IGRA) in nearly *two decades.* Furthermore, it is important to note that these land claims have never been validated by the U.S. Government or any court of law. In fact, the courts have ruled *against* the Bay Mills Tribe on their claim on two separate occasions.

The people of Michigan have spoken at the ballot box about gaming expansion in our state. In 1994, they voted to allow three casinos in the City of Detroit. In 2004, the people voted to limit any more expansion of gaming unless there was a statewide referendum. In addition, the Michigan Gaming compact specifically prohibits off-reservation gaming unless all of the Tribes in Michigan agree to a revenue-sharing plan. These two bills are simply an attempt to circumvent both the will of the people of Michigan and the compact the Michigan State Legislature has made with the Tribes in Michigan.

Instead, these bills would have Congress mandate not one, but two off-site reservation casinos located over 350 miles away from the reservations of these Tribes. Moreover, the disputed land is located near the two Tribes reservations in the Upper Peninsula but yet the land they want for a "settlement" is located 350 miles away near the City of Detroit. If these bills were to become law, what would prevent other Tribes from seeking a land claim anywhere in the United States for off-site reservation gaming? Is this the real intent of the Indian Gaming Regulatory Act?

It is indeed ironic that in the 109th Congress, the House Resources Committee, on a bi-partisan basis, passed legislation by an overwhelming margin to restrict off-site reservation gaming. Yet today, it now seeks to expand Native American gaming in an unprecedented manner.

Congress passed the Indian Gaming Regulatory Act in 1988 that allows Tribes to conduct gaming on lands acquired before October 17, 1988. In 1993, former Governor John Engler negotiated a gaming compact with the seven federally-recognized Tribes in Michigan, including the Bay Mills and Sault Ste. Marie Tribes.

In order to prevent a proliferation of Indian gaming across the state, a provision was added to the compact that required any revenue generated by off-reservation gaming be *shared* among the Tribes who signed the compact. This provision has worked well for over 15 years. The two bills before the House Resources Committee

would simply nullify this critically important provision of the Michigan Gaming Compact. Both of these bills would allow the Tribes to; 1) settle a land claim that has never been validated and is located near their reservations in the Upper Peninsula of Michigan and 2) acquire lands 350 miles from their reservation to build casinos. Furthermore, these bills actually include gaming compacts in them that were never approved by the Michigan State Legislature who has approved every other gaming compact. It is important to note that Congress has *never* passed a gaming compact in the history of Indian gaming. IGRA specifically grants that authority to the states.

In 2004, the voters of Michigan spoke again in a state-wide referendum and overwhelmingly approved a ballot initiative that would restrict the expansion of gaming in the state of Michigan. This referendum would require local and state-wide approvals for any private expansion of gaming in Michigan.

The people and the elected officials of Michigan already have a solution to this matter—the ballot box. There is nothing in the referendum that would prevent the two Tribes and their non-Indian developers from initiating a statewide referendum to get casinos in Port Huron and in Romulus. In fact, both of those cities have already passed local referendums. But the Tribes and their developers decided to short-circuit the vote of the Michigan people and come to Congress to get a casino on a proposed land claim that is located near the Tribes reservation lands in the Upper Peninsula of Michigan.

I am aware that the Governor of Michigan has sent the House Natural Resources Committee a letter supporting these bills. You should know that there is no legal basis for the State to support these agreements because, in fact, the State has already won this case in the Michigan Court of Claims and the Bay Mills Tribe appealed it all the way to the U.S. Supreme Court. The Supreme Court subsequently declined to hear the case.

The Governor ignored the fact that the city of Detroit will be the main victim of the states largess in these casino deals. The city of Detroit will lose hundreds of millions of dollars as a result of the competition of these new casinos and that will cause irreparable harm. Harm to whom? Harm to the current investors of the casinos in the City of Detroit, who have invested more than $1.5 billion in the construction of the three casinos in the City of Detroit. Harm to the thousands of jobs that have been created and the tax revenue that those jobs generate for the City of Detroit and the State of Michigan. Ultimately, this will harm the State. When compared to their private counterparts, Native American gaming sites, because they are sovereign nations, and must share their revenue with other Native American tribes, do not bring in the tax revenue of private investors.

In the end, these two Tribes are seeking to do an end-run around two statewide referendums and the Michigan Gaming Compact of 1993. Rarely have voters in any state in this country spoken so clearly on gaming issues. In light of all of this, it would be a travesty for Congress to mandate two off-site reservation gaming casinos that would have such negative impact on the people in Michigan.

But, for the moment, let us ignore the impact that these bills will have on the City of Detroit. Let us ignore the precedent that these bills will set, allowing any Native American tribe to claim any piece of land hundreds of miles away, as their native tribal land. Let us ignore the fact that IGRA has not been reauthorized in more than two decades, and clearly needs to be revisited and revised by Congress. What I cannot ignore is the strong possibility that the very integrity of Congress is in jeopardy.

On October 10, 2002, in testimony before the Senate Committee on Indian Affairs, The Chairman of the Sault Ste. Marie Tribe, Bernard Boushor, said "the Bay Mills case was a scam from the start." In testimony and information provided to the House Natural Resources Committee in February of this year, Saginaw Chippewa Chief Fred Cantu cited Chairman Boushor's testimony, stating that the original lawsuit on the land claim was a collusive lawsuit. I have provided Chairman Boushor's statement to be included as part of today's testimony.

I would strongly encourage the Committee to carefully read these documents on how this land claim actually began. The proponents of this legislation have repeatedly stated that these bills are simply to address the aggrieved landowners in Charlotte Beach. But according to the Sault Ste. Marie Tribe "the Charlotte Beach claim did not originate with Bay Mills. It was a product of a Detroit area attorney who developed it specifically as a vehicle to obtain an IGRA casino . . . the goal was never to recover the Charlotte Beach lands."

How was this originally a collusive lawsuit? The Bay Mills Tribe sued Mr. James Hadley on October 18, 1996 who entered into a settlement in which he gave land to the Bay Mills Tribe 300 miles from their reservation to build a casino in Auburn Hills, Michigan. That plan was rejected by the Department of Interior. The point

is that Mr. Hadley was not an aggrieved landowner, he was an active participant in what the Sault Tribe described as "a collusive lawsuit" and "a scam."

I strongly encourage all of you to read the testimony of the former Sault Ste. Marie Chairman before the Senate Committee on Indian Affairs, the testimony of the Saginaw Chippewa Chief Fred Cantu, and review the documents Chief Cantu provided to the Committee, which was provided to the House Natural Resources Committee at its hearing in February.

There is a way to save the integrity of Congress. The Saginaw Chippewa Tribe has requested that the U.S. Department of Interior investigate the land claims made by these Tribes, and determine whether they are valid claims, worthy of federal resolution. It is my understanding that the Department of the Interior is reviewing the validity of these land claims. I would urge the Committee to wait until this investigation is complete until it rushes into passing legislation that mandates off-reservation gaming.

I thank the Committee for its time. Congress should not be in the business of handing out off-site reservation gaming casinos. It is my hope that the wisdom of the Committee and of Congress is the rejection of both of these bills for the following reasons:

- These bills set a dangerous precedent for Congress by approving a compact which is a state, not a federal, responsibility;
- They contravene Michigan state law;
- They are controversial among the Native American tribes in Michigan; indeed, nine out of Michigan's 12 tribes oppose these bills;
- The City of Detroit would lose thousands of jobs and hundreds of millions of dollars in the investments made by the three casinos currently operating in Detroit;
- The Bureau of Indian Affairs has already rejected a similar application for gaming in Romulus, Michigan;
- These bills would involve the removal of valuable land from the tax rolls of the State of Michigan, resulting in the potential loss of even more revenue;
- It is uncertain that these land swaps are legitimate, possibly jeopardizing the integrity of the U.S. Congress;
- The Committee should allow the Department of Interior the time to do their due diligence to determine if these are valid land claims; and
- Congress needs to revisit, revise and reauthorize the IGRA, which has not had a comprehensive review in nearly two decades.

Again, I thank the Chairman and the Ranking Minority Member for this hearing. The Committee must reject these bills based on the merit of the will of the people of the City of Detroit and the State of Michigan.

Mr. CONYERS. Shelly Berkley, Las Vegas, Nevada—that tells you something right there. That speaks worlds of information about this distinguished lady.

Shelly Berkley has distinguished herself on the Ways and Means Committee, the Veterans Affairs Committee. She's been strongly active in Foreign Affairs as one of the causes that attract her great talent. She has been looking at this issue for quite a while, and I'm happy that she was able to come before the Committee today.

We recognize you, Shelly Berkley, for your comments and your views on the subject.

TESTIMONY OF THE HONORABLE SHELLY BERKLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Ms. BERKLEY. Thank you very much, Mr. Chairman; and thank you, Mr. Smith, Ranking Member, and all of the Committee Members who have come today to listen to us testify on this very important issue.

I appreciate the opportunity to speak today on an issue that we have been dealing with in Congress for more than 5 years now, and it keeps rearing its ugly head again and again. I'm especially

thankful to you, Mr. Chairman, for obtaining a referral of these bills to your Committee in order to more fully investigate their potential impact. After listening to your opening remarks, I'm not sure that there is much that I can add to your body of knowledge, but I certainly shall try.

I strongly oppose the bills offered by my colleagues, Mr. Dingell and Mr. Stupak, because they offer a blueprint to any Indian tribe who wants to circumvent the laws regulating Indian gaming in order to build a casino outside the boundaries of its sovereign territory.

For those of you who are not aware, I not only represent Las Vegas but I grew up in Las Vegas, the gaming capital of the world. I'm living proof of the positive impact gaming can have on a community.

My father moved his family to Las Vegas 45 years ago when I was a young girl. He was a waiter. On a waiter's salary, he put food on our table, clothes on our back and a roof over our heads. And that's not a bad thing on a waiter's salary. He also put two daughters through college and law school.

Now while I respect everybody's opinion about gambling, I think I must say that, while I was raised in Las Vegas and subjected to gaming all of my life, I don't drink, I don't smoke, I don't gamble, I haven't assaulted anybody, I'm debt free.

Mr. CONYERS. As they say, as far as we know.

Ms. BERKLEY. As far as I know. And I'm not unique. I think I'm rather representative of the people that I do represent.

I certainly don't begrudge the Bay Mills or Sault Ste. Marie Tribe or the Michigan communities at Port Huron and Romulus their desire to participate in this successful industry. But I do take issue with them attempting to flout the laws on Indian gaming, come to Congress for the worst type of special interest, special legislation and compete with existing facilities under an entirely different set of rules that they would like Congress to implement.

We have a Federal law on the books that governs the process for approving gaming by native Indian tribes. It's called the Indian Gaming Regulatory Act. Under IGRA, the Bureau of Indian Affairs can approve gaming on newly acquired land taken into trust under very limited circumstances.

In the case of the Bay Mills and Sault Tribes, each of which already has gaming on its reservation land, a suspect land claim was used as a bargaining chip in settlements with the Governor in which the tribes agreed to renounce their claim and receive alternate properties which just so happened to be in locations more conducive to gaming, namely, near the population center of Detroit. In fact, a representative of the Sault Tribe described the deal as shady in his Senate testimony in 2002, but that was before his tribe joined the party and stood to benefit from this.

In addition to the suspect land claim, which has been tossed out of both State and Federal court, the settlement reached with former Michigan Governor John Engler to allow gaming at Port Huron and Romulus, which, incidentally, are part of the ancestral lands of a different tribe, the Saginaw Chippewa, violates Michigan tribal gaming compact which requires that any new off-reservation gaming have the support of all the tribes in the State.

As Mrs. Kilpatrick has already testified, most of the tribes in the State are opposed to this, so these settlements do not have that support.

Residents of Detroit can attest to the role gaming has played in transforming that city. The three new casinos employ more than 7,500 people in the city and contribute hundreds of millions of dollars each year as tax revenue to the city and the State. The two proposed facilities will compete with the Detroit casinos for some of the exact same customers but as sovereign tribal entities without the burden of State and local taxes.

In a misguided attempt to promote tribal sovereignty, the Committee on Natural Resources approved the Dingell and Stupak bills last month with little attention to the potential ramifications for other parts of our country. If these bills become law, any one of the more than 500 recognized Native American tribes can argue that they have a right to sue private landowners in an attempt to bargain for gaming somewhere else. This debate raises serious questions about issues under the jurisdiction of the Judiciary Committee, and that's why I'm glad we have an opportunity to testify in front of you today.

This is not a simple tribal lands claim, as the proponents would like Members of Congress to believe. In short, Congress is being asked to pass special interest legislation benefiting two tribes, each of which already has gaming based on a suspect land claim that has already been thrown out of State and Federal court so they can open casinos hundreds, hundreds of miles from their ancestral land in direct competition with existing facilities that have helped revitalize a major American city.

I commend you for taking a closer look at these issues; and I thank you very much, Mr. Chairman, for again allowing me to testify in front of your august Committee.

Mr. CONYERS. Thanks. You're amazingly brief this morning, Shelly Berkley.

Ms. BERKLEY. I'm learning from past mistakes.

Mr. CONYERS. We are grateful to both of you for joining us, and I know you will be following our activities, and we may be coming back to you for consultation. Thanks so much for starting us off.

We now call panel two. We have the distinguished Assistant Secretary, Bureau of Indian Affairs, U.S. Department of the Interior, Mr. Carl Artman; and then we have Chief Fred Cantu, Saginaw Chippewa Tribe of Michigan;and then we have Alicia Walker, the Sault Ste. Marie Chippewa Tribe; and Attorney Kathryn Tierney, the Bay Mills Indian Community.

Cynthia Abrams of the National Coalition Against Legalized Gambling is unable to be with us, but we will accept into the record her written statement.[1]

I also note that our good friend and colleague, Hank Johnson of Atlanta, GA, has joined the hearings, thank you.

The Chair recognizes the Ranking Member.

Mr. SMITH. Thank you, Mr. Chairman.

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[1] The statement referred to was not received by the Committee at the time this hearing was printed.

As you just mentioned, Dr. Guy Clark, Chairman of the National Coalition Against Global Expansion, was scheduled to testify, but it turned out he is unable to do so, and so I would like to ask unanimous consent that his statement or testimony be made a part of the record.

Mr. CONYERS. Without objection, so ordered.

[The prepared statement of Dr. Clark follows:]

PREPARED STATEMENT OF DR. GUY CLARK, CHAIRMAN OF THE NATIONAL COALITION AGAINST GAMBLING EXPANSION

As Chairman of the National Coalition Against Gambling Expansion, I appreciate the invitation to submit testimony regarding the issue of gambling expansion and the proposed legislation presently before this Committee.

We strongly oppose this legislation because we believe these land claims should go through the Bureau of Indian Affairs. There should be no short cuts by attempting to win the favor of Congress.

But more importantly, my remaining comments will extend beyond the specific questions of land claims before you this morning. Because the driving force behind these land claims is the desire for more gambling expansion.

Many of you will agree that nearly all of the debate around gambling expansion in this country, whether in Michigan or anywhere else, consistently focuses on questions about "jobs" and "revenue."

But what is remarkable about all of this frenzied discussion about jobs and revenue is that virtually no one ever stops for a minute and examines the product itself.

Because this is a debate not about just any kind of gambling. It's not about Friday night poker games with the guys at work or buying a square in the Super Bowl office pool. This fight is about exploitative gambling—combating those who prey on human weakness for profit.

America is on an exploitative gambling binge. What started forty-five years ago with a lottery ticket has evolved into addiction delivery systems. There are now more than a dozen pathological gambling states and many others heading there fast.

Today, the purest form of exploitative gambling is machine gambling with close to 800,000 slot machines and video poker games in operation in this country—that's one machine for every 395 Americans. And, it's these machines that generate most of the profits for the casino trade.

What makes these electronic gambling machines exploitative? According to Dr. Natasha Schull at MIT, when you look at what these algorithms inside the machines are doing, it's a high tech version of "weighting the deck" or "loading the dice." Using loaded dice in gambling is cheating and is illegal.

The goal of the technology behind these electronic loaded dice is no secret: how to get people to play longer, faster and more intensively. Every feature of the machine—the mathematical structure, visual graphics, sound dynamics, seating and screen ergonomics—is geared, in the language of the casino trade, to get gamblers to "play to extinction"—which means until their money is gone. What the user is seeing is not an accurate representation of what's happening inside the machine.

In my own state of New Mexico, Konami, one of the largest slot machine manufacturers, recently admitted to using subliminal technology in its machines by deceptively flashing jackpot symbols at players. I know you are well aware that many social scientists have done extensive research on subliminal perception and its motivational power.

A modern slot machine doesn't have a handle to pull or use reels—they use buttons and video screens. Instead of coins, they take player consumer cards. And instead of a few games per minute, hundreds can be played.

Instead of actual reels, they have virtual reels that rely on complicated algorithms and virtual reel mapping, concepts that few people in the casino trade itself understand—much less policy makers and citizens considering these machines in their own communities.

But despite the exploitative nature of these machines, there are still many people who say aren't people playing these machines "voluntarily?"

All of you are familiar with consumer loyalty cards. Nearly all of the supermarkets and drug stores offer them. They use these cards to track consumers. The casino trade has taken this marketing research technology to a whole new level.

Anyone comforted by the idea that playing the slots is voluntary should spend a day with those who work for the casino trade.

People are targeted based on factors such as how *fast* they play a slot machine, information that can be collected through their "Player's Rewards card" because many players use these cards directly in the machine. The faster someone plays, the more likely they are to play out of out of control. And the faster you play (i.e. more out of control you are), the more you are offered incentives like free slot play as well as free meals and hotel rooms.

The casino trade's message is "most people gamble without a problem" declaring that "only" 5% of the general population has a problem. To put it in real numbers, that's one out of every twenty people. But the real question for everyone in this country to be asking is: "What is the percentage of problem gambling behaviour, not among the general population, but of the gamblers who play electronic gambling machines once a month or more?" Because having these machines locally is very different than having to travel to Las Vegas or drive several hours to play them. Instead of going 2–3 times a year to play the machines, now tens of millions of people are able to play the machines weekly.

The facts show that more than fifty percent of regular electronic gambling machine players are experiencing harm. That's of those who play once or more per month. It's not telling it straight to say that "most people gamble without a problem" because the vast majority of people don't play slots or haven't yet played long enough or frequent enough to experience the imminent harm. And, it's these problem gamblers who are the money makers. More than 80% of the revenues come from 20% of the players.

Yes, there are a few other things in our society that are exploitative but our government aims to protect us from exploitative and predatory things. The major difference here is that many of our own state governments are a virtual partner in the exploitation. In every other instance, our government prosecutes such practices.

The time has arrived for a national solution to America's gambling binge and it begins with a thorough and transparent investigation into the electronic gambling machines that are driving the casino trade's massive expansion.

It's time this country put the chance back in gambling.

Mr. CONYERS. Carl Artman, the Assistant Secretary for Indian Affairs, is a member of the Oneida Tribe of Wisconsin, where he was chief counsel of the tribe before coming to Washington as Associate Solicitor for Indian Affairs in the Department; and he was confirmed in his current position last March. We welcome him to these proceedings.

Your statements are all included in the record, and we invite your oral testimony.

Good morning.

TESTIMONY OF CARL ARTMAN, ASSISTANT SECRETARY, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. ARTMAN. Good morning, Mr. Chairman, Members of the Committee. Thank you.

My name is Carl Artman, and I am the Assistant Secretary for Indian Affairs of the Department of the Interior. I am pleased to be here today to testify on H.R. 2176, a bill to provide for and approve this settlement of certain land claims for the Bay Mills Indian Community, and on H.R. 4115, a bill to provide for and approve certain land claims for the Sault Ste. Marie Tribe of Chippewa Indians.

Through the legislation, Congress would approve and ratify agreements executed in 2002 between the State of Michigan and the Bay Mills and Sault Ste. Marie Tribes. Alternate lands would be provided to each tribe in consideration for extinguishing the tribe's claim to the Charlotte Beach, Michigan, lands.

The Department does not support these bills for several reasons.

The mandatory Nature of the Land Acquisition Provisions would require that the alternative lands be taken into trust even if NEPA liabilities exist on these lands. We recommend that any acquisition in trust be conditioned upon the land's meeting applicable environmental standards.

The mandatory nature of the land acquisition would also preclude consultation with affected tribal, State and local governments that takes place under our regulations.

In addition, section 2710(d) of the Indian Gaming Regulatory Act requires a tribe and State to enter into a compact approved by the Secretary and that notice of such approval be published in the Federal Register prior to Class III gaming occurring.

The settlement agreements include many provisions commonly found in a tribal State compact under the Indian Gaming Regulatory Act, such as:

The Governor's concurrence in the trust acquisition of the alternative lands for gaming purposes.

Tribal payments to the State of Michigan in an amount equal to 8 percent of the net win derived from all Class III electronic games of chance in consideration for limited geographical exclusivity, and payments in the aggregate amount equal to 2 percent of the net win to the local units of State governments.

Limitations of the tribe's Class III gaming operations in Michigan.

A statement that section 9 of the compact is not implicated by provision of the alternative land to the tribe and the Governor's waiver of this provision to the extent it is determined to be implicated.

However, these bills appear to circumvent the tribal State compact approval process by bypassing the approval of the Michigan State legislature. The Department respects tribal and State rights and supports the tribal-State compact negotiation and approval process. We believe that these provisions would be best in a compact.

Finally, we're concerned with the lack of consultation with other Michigan tribes that may be impacted by the terms of these settlements, since the legislation would waive section 9 of the Michigan compacts to the extent that it is implicated by the settlements.

This concludes my remarks; Mr. Chairman; and I would be happy to answer any questions that the Committee has. Thank you.

Mr. CONYERS. Thank you, sir. We welcome your appearance here.

[The prepared statement of Mr. Artman follows:]

PREPARED STATEMENT OF CARL ARTMAN

Good morning, Mr. Chairman and Members of the Committee. My name is Carl Artman and I am the Assistant Secretary—Indian Affairs, at the Department of the Interior. I am pleased to be here today to testify on H.R. 2176, a bill to provide for and approve the settlement of certain land claims of the Bay Mills Indian Community, and on H.R. 4115, a bill to provide for and approve certain land claims of the Sault Ste. Marie Tribe of Chippewa Indians. Because of the potential for liability to the United States, and because the settlement agreements go beyond those required for the settlement of a land claim and circumvent an established process, the Department cannot support these bills.

BACKGROUND

H.R. 2176 would approve and ratify an agreement executed on August 23, 2002, between the Governor of the State of Michigan and the Bay Mills Indian Community. H.R. 4115 would approve and ratify an agreement executed on December 30, 2002, between the Governor of the State of Michigan and the Sault Ste. Marie Tribe. The settlement agreements provide the basis for Congress to extinguish the two tribes' claims to the Charlotte Beach lands. In consideration for the extinguishments of the tribes' claims, Section 2 of H.R. 2176 would require the Secretary to take into trust for the Bay Mills Indian Community alternative land located in Port Huron, Michigan. Section 1(b) of H.R. 4115 would require the Secretary to take into trust for the Sault Ste. Marie Tribe two parcels of land, one located in Oswego County, subject to the approval of the Village of Vanderbilt and the Little Traverse Bay Bands of Odawa Indians, and the other one located in the City of Romulus, Michigan, subject to the approval of the City.

PROBLEMATIC PROVISIONS

Both bills would establish a 30 day requirement for the Secretary to take land into trust for the Tribe once the Secretary receives a title insurance policy for the alternative land that indicates it is not subject to any mortgage, lien, deed of trust, option to purchase, or other security interest. The mandatory nature of the land acquisition provisions would require that alternative lands be taken into trust even if the Department determines that potential liabilities exist on these lands. The legislation precludes the Department from evaluating the subject property to determine whether hazardous materials are present. The Department asks that Congress consider the cost to and potential liability of the United States Government with respect to legislative transfers of land into trust, both in this particular instance and all future mandatory trust transactions. We recommend any acquisition in trust be conditioned upon the lands meeting applicable environmental standards. The mandatory nature of the land acquisition would also preclude consultation with affected tribal, State, and local governments that takes place under our regulations.

In addition, section 2710(d) of the IGRA requires that a tribe and State enter into a compact approved by the Secretary and that notice of such approval be published in the Federal Register before Class III gaming may occur.

The settlement agreements include many provisions commonly found in a tribal-state compact under the Indian Gaming Regulatory Act (IGRA):

(1) the Governor's concurrence in the trust acquisition of the alternative lands for gaming purposes;

(2) Tribal payments to the State of Michigan in an amount equal to 8 percent of the net win derived from all Class III electronic games of chance in consideration for limited geographical exclusivity, and payments in the aggregate amount equal to 2 percent of the net win from all Class III electronic games of chance to local units of state governments;

(3) limitation of the Tribes' Class III gaming operations in Michigan;

(4) the Governor's forbearance from exercising the State's unilateral right to renegotiate the Compact pursuant to Section 12(c) of the Compact; and

(5) a statement that Section 9 of the compact is not implicated by provision of the alternative land to the Tribe, and the Governor's waiver of this provision to the extent it is determined to be implicated.

However, these bills appear to circumvent the tribal-state compact approval process by bypassing the approval of the Michigan State legislature. The Department respects tribal and state rights and supports the tribal-state compact negotiation and approval process. Therefore, we believe that these provisions would best appear in a compact.

Finally, we are concerned with the lack of consultation with other Michigan tribes that may be impacted by the terms of these settlements since the legislation would waive Section 9 of the Michigan compacts to the extent it is implicated by the settlements.

This concludes my remarks. I will be happy to answer any questions the Committee may have. Thank you.

Mr. CONYERS. The Chair notes the presence of Steve Chabot of Ohio, who is the Ranking Member currently, and also Jim Jordan of Ohio. What is this, an Ohio pile-on here, everybody from Ohio? Welcome to the hearing, gentlemen.

We now turn to Chief Fred Cantu, the Saginaw Chippewa Tribe of Michigan. He has been that chief, having been unanimously elected to it in December of 2005; and then he was reelected last December. He has been appointed to a vacancy on the tribal council in late 2004, and before that had been the chief of the tribal fire department.

Chief Cantu, welcome to the Committee. I don't know if you've testified in Congress before, but we've read your prepared statement, and now we're happy to hear your views summarizing your position.

TESTIMONY OF CHIEF FRED CANTU,
SAGINAW CHIPPEWA TRIBE OF MICHIGAN

Chief CANTU. Thank you, Mr. Chairman. This is probably my third time here in Congress, but thank you.

My name is Fred Cantu. I'm the Chief of the Saginaw Chippewa Indian Tribe. I want to thank the Committee for allowing our tribe to testify today.

Mr. Chairman, let me start by saying these bills are very controversial, not just here on Capitol Hill but also in Michigan and across Indian country. This is because these bills push the envelope past the limits of Indian policy.

I've submitted two items to the Committee which raise serious questions about these two bills.

First, I have submitted correspondences of the Department of Interior discussing and rejecting the request to prosecute these claims because of the view—they view them as unwinable.

I also submitted testimony—testimony submitted by the Sault Ste. Marie Tribe in 2002 opposing the Bay Mills claim and attacking its validity.

It is important to note that these land claims have never been independently verified by anyone. In fact, the Bay Mills Indian Community claim was rejected by the State and Federal courts; and the letters I have submitted show the U.S. Department of Interior believes the claims fail on its merits and cannot be won. But there are many questions that need to be examined.

According to the former Sault Tribe chairman, this whole land claim was a scam from the start. According to detailed testimony the Sault Tribe gave in 2002 and which I've submitted with my written testimony, the Charlotte Beach claim was conceived by a Detroit area casino who developed it specifically as a vehicle to obtain a casino, not to settle a lands claim.

We would ask that this Committee to investigate the detailed charges made by the Sault Tribe in their testimony before the Senate Committee on Indian Affairs in 2002.

We also believe these bills undermine the Michigan gaming compact, which specifically required that no tribe conduct off-reservation gaming without a revenue agreement from the other tribes in Michigan. This is a blatant attempt by these two tribes to evade their obligation under the compact which was specifically reviewed and approved by the Michigan legislature.

Furthermore, this legislation would have Congress ratify a tribal State compact for the first time in history, which undermines the

intent of IGRA and circumvents the authority of the Michigan legislature.

Our tribe is deeply concerned that these proposed casinos are to be located in the ancestral lands of the Saginaw Chippewa Indian Tribe. Neither the Bay Mills Tribe nor the Sault Tribe has any ancestral connection to these lands, and the Indians Claims Commission has ruled on this on two separate occasion.

During the February 6, 2008, hearing in the House Resource Committee, one Member of Congress remarked that these bills were solely about settling the lands claim and nothing about—to do with gaming. If that is the true goal, we believe the validity of this claim should be proven.

To that end, we respectfully recommend that this Committee remove the gaming provision from this legislation and have the appropriate Federal agencies determine whether these lands claims are legitimate. If they find that these claims are legitimate, we would ask that they make a determination as to the value of the claim and an appropriate compensation for those claims. This would ensure that these land claims have merit and would ensure the tribe are properly compensated if these claims exist.

While these bills may be good for two tribes and their nonIndian developers, we believe it is bad policy for Indian country and urge the Committee to reject these bills.

Again, thank you for the opportunity to testify.

Mr. CONYERS. Thanks, Chief Cantu. We appreciate you being here one more time in the Congress.

[The prepared statement of Mr. Cantu follows:]

PREPARED STATEMENT OF CHIEF FRED CANTU

My name is Fred Cantu and I am the Chief of the Saginaw Chippewa Indian Tribe. I want to thank the committee for allowing our Tribe to testify today.

Mr. Chairman, let me start by saying these bills are very controversial—not just here on Capital Hill—but all across Indian Country. Tribes across the country are waiting to see if Congress will actually allow two Tribes to get casinos on lands 350 miles from their reservations to settle a land claim that has never been validated by a single court or the federal government. In fact, the Bay Mills Indian Community's claim was rejected by both state and federal courts, and has also been rejected by the United States Department of Interior.

These land claims have never been independently verified by anyone—and these bills raise more questions than they provide solutions. These claims would lower the standard for the establishment of a legitimate land claim and would invite other tribes to seek land claim settlements for casinos without any independent verification of the validity of such claims. In fact it could be argued that the long history and ill treatment received by tribes across the country could support similar claims that are at least as compelling as those raised in these bills.

If Congress passes these bills, you will have Tribes across the country lined-up before Congress seeking casinos for land claims that have never been proven valid. We have not found one instance in which Congress has granted a Tribe a casino and a gaming compact for settling a land claim, much less the type of an unsubstantiated and questionable claims presented here.

These bills would establish a dangerous precedent and must be rejected by Congress for the sake of Indian gaming. What separates Indian gaming from private gaming is that Tribes are restricted to gaming on Indian Lands—not wherever they feel it is most profitable. If Congress begins authorizing Tribes to establish reservations 350 miles from their existing reservations and designates those lands for gaming, it will completely undermine the whole premise of Indian gaming. And that is why Mr. Chairman, no other Tribe supports these bills.

Our Tribe is also deeply concerned that these proposed casinos are to be located in the ancestral lands of the Saginaw Chippewa Tribe. Neither the Bay Mills Tribe

nor the Sault Tribe has any ancestral connection or claim to these lands and the Indian Claims Commission has ruled on this on two separate occasions.

We also believe these bills undermine the Michigan Gaming Compact which specifically requires that no Tribe conduct off-reservation gaming without a revenue agreement from the other Tribes in Michigan. Very simply—this is a blatant attempt by these two Tribes to evade their obligations under the Compact, which was specifically reviewed and approved by the Michigan State Legislature. Furthermore, this legislation would have Congress ratify a Tribal/State compact for the first time in history—which undermines the intent of IGRA and circumvents the authority of the Michigan Legislature.

During the February 6, 2008, hearing in the House Natural Resources Committee, one Member of Congress remarked that these bills were solely about settling a land claim and had nothing to do with gaming. If that is the true goal, we believe the validity of this claim should be proven. To that end, we respectfully recommend that this Committee remove the gaming provisions from this legislation and have the appropriate federal agencies, determine whether these land claims are legitimate. If they find these claims are legitimate we would ask that they make a determination as to the value of the claim and the appropriate compensation for those claims. This would ensure that these land claims have merit and would ensure the Tribes are properly compensated if these claims exist.

But there are many questions that need to be examined. According to the former Sault Tribe Chairman, this whole land claim was a scam from the start. According to the Sault Tribe, the Charlotte Beach claim was conceived by a Detroit area attorney who developed it specifically as a vehicle to obtain a casino—not to settle a land claim. We would ask this committee to investigate the detailed charges made by the Sault Tribe in their testimony before the Senate Committee on Indian Affairs in 2002.

Mr. Chairman, IGRA was meant to promote economic development on Indian reservations—not to reward Tribes who scheme with non-Indian developers.

While these bills may be good for two Tribes and their non-Indian developers, it is simply bad policy for Indian Country. We would hope the Committee does the right thing and rejects these bills.

Thank you.

Mr. CONYERS. I'm now turning to a partner of the law firm Greene, Meyer & McElroy. An attorney, Alicia Walker, a law graduate from Georgetown Law School, is our witness today. She's been representing Indian tribes for quite a while. She's here today on behalf of the Sault Tribe.

Welcome to the Committee hearing.

TESTIMONY OF ALICE E. WALKER, ESQUIRE, SAULT STE. MARIE CHIPPEWA TRIBE

Ms. WALKER. Thank you, Mr. Chairman.

Unlike Chief Cantu, this is my first time testifying before Congress, so I didn't get the button quite right.

Thank you for the opportunity to present testimony today.

As you noted, my name is Alice Walker. I'm from Boulder, Colorado, a partner in the law firm of Greene, Meyer & McElroy. We have represented the Sault Tribe for more than 20 years on a variety of issues, and I am here today representing the Sault Tribe on the settlement of the Charlotte Beach land claim.

It is my pleasure to appear before the Committee today to urge its support for H.R. 2176 and H.R. 4115, both of which would settle the long-standing claims of the Bay Mills Indian Community and the Sault Tribe with respect to lands in Charlotte Beach. The bills arise from two settlement agreements. They were entered into in August and December of 2002, one between Bay Mills and the other between the Sault Tribe. Both of the 2002 settlement agreements contain identical language, except for identification of potential alternative lands.

The record before the Committee on Natural Resources describes in detail the nature of those settlement agreements and the propriety of congressional approval of those settlement agreements so that final resolution of the Charlotte Beach land claim may finally come to fruition.

The issue before the Committee today relates to the need for the judicial review provision in each of the bills, which states as follows:

This is the enforcement provision: The settlement of land claim shall be enforceable by either tribe or the Governor according to its terms. Exclusive jurisdiction over any enforcement action is vested in the United States District Court for the Western District of Michigan. That provision is section 1(e)(3) of H.R. 4115 and section 3(c) of H.R. 2176. That mirrors section 14 of the 2002 settlement agreements which provide that to the extent there is a dispute or controversy involving the terms of this settlement, the parties agree that all actions or proceedings will be tried and litigated only in the Federal District Court for the Western District of Michigan.

The judicial review provisions are consistent with the 2002 settlement agreement and indeed may be viewed as a belt-and-suspenders approach to ensuring that no court other than the United States District Court for the Western District of Michigan will have jurisdiction over disputes arising under the 2002 settlement agreement. While the judicial review provisions of the bills are consistent with the 2002 settlement agreement, they are not necessary in order to accomplish the substantive purposes of the bills, which is to finally resolve the long-standing Charlotte Beach land claims to the satisfaction of both tribes as well as the Charlotte Beach landowners.

Accordingly, the Sault Tribe does not object to retaining the judiciary review provisions in the bill, since they are consistent with the 2002 settlement agreements, or eliminating those provisions, since they are arguably duplicative of the underlying agreements.

On behalf of the Sault Tribe, I look forward to the Committee's consideration of this issue and its referral of H.R. 2176 and H.R. 4115 back to the House floor. Thank you for the opportunity to testify today.

Mr. CONYERS. Thank you so much. We are delighted to have you here for your first congressional experience——

Ms. WALKER. Thank you.

Mr. CONYERS.—before the Judiciary Committee. It will be a pleasant experience, I assure you.

Ms. WALKER. I sure hope so.

[The prepared statement of Ms. Walker follows:]

PREPARED STATEMENT OF ALICE E. WALKER, ESQ.

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on behalf of the Sault Ste. Marie Tribe of Chippewa Indians. My name is Alice E. Walker. I am a partner and shareholder in the law firm of Greene, Meyer & McElroy, P.C., located in Boulder, Colorado. Our firm has represented the Sault Tribe for more than twenty years on a variety of issues, and I am here today representing the Sault Tribe regarding the settlement of the Charlotte Beach land claims.

It is my pleasure to appear before the Committee today to urge its support for H.R. 2176 and H.R. 4115, both of which would settle the long-standing land claims of the Bay Mills Indian Community and the Sault Ste. Marie Tribe with respect to

lands in Charlotte Beach, Michigan. The bills arise from two Settlement Agreements, entered into in December of 2002, one between the Sault Ste. Marie Tribe and the State of Michigan, and the other between the Bay Mills Indian Community and the State of Michigan. Both of the 2002 Settlement Agreements contain identical language, except for the identification of alternative lands. The record before the Committee on Natural Resources describes in detail the nature of those settlement agreements and the propriety of congressional approval of those settlement agreements so that final resolution of the Charlotte Beach land claims may finally come to fruition.

The issue before the Committee today relates to the need for the judicial review provision in each of the bills, which states as follows: "(c) Enforcement—The Settlement of Land Claim shall be enforceable by either the tribe or the Governor according to its terms. Exclusive jurisdiction over any enforcement action is vested in the United States District Court for the Western District of Michigan." That provision is Section 1(e)(3) of H.R. 4115, and Section 3(c) of H.R. 2176. That provision mirrors section 14 of the 2002 Settlement Agreements, which provide that ([t]o the extent there is a dispute or controversy involving the terms of this Settlement, the parties agree that all actions or proceedings will be tried and litigated only in the Federal District Court for the Western District of Michigan.

The H.R. 4115 and H.R. 2176 judicial review provisions are consistent with the 2002 Settlement Agreement, and indeed, may be viewed as a belt-and-suspenders approach to ensuring that no court other than the United States District Court for the Western District of Michigan will have jurisdiction over disputes arising under the 2002 Settlement Agreements. While the judicial review provisions of the bills are consistent with the underlying 2002 Settlement Agreements, they are not necessary in order to accomplish the substantive purposes of the bills, which is to finally resolve the long-standing Charlotte Beach land claims to the satisfaction of both Tribes as well as the Charlotte Beach landowners. Accordingly, the Sault Tribe does not object to either retaining the judicial review provisions, since they are consistent with the 2002 Settlement Agreements, or eliminating those provisions, since they are arguably duplicative of the underlying agreements. On behalf of the Sault Tribe, I look forward to the Committee(s consideration of this issue and its referral of H.R. 2176 and H.R. 4115 back to the House floor.

Thank you for the opportunity to testify today.

Mr. CONYERS. Attorney Tierney, you are welcome here as the counsel for the Bay Mills Indian Community. You've represented them from the beginning of your legal career, and I am looking forward to getting the benefit of your experience as it applies to the questions that are now before the Judiciary Committee of the House of Representatives.

Welcome to our hearing this morning.

TESTIMONY OF KATHRYN TIERNEY, TRIBAL ATTORNEY, BAY MILLS INDIAN COMMUNITY

Ms. TIERNEY. Thank you, Mr. Chairman. It is a pleasure to be here.

I have to say, this weather almost prevented me from making it, and so I'm glad to be sitting at this table.

As you've indicated, I am here as in-house counsel for the Bay Mills Indian Community and representing them and also its President of the Executive Council, Mr. Jeffrey Parker, who was invited to testify here today. In his absence, I am sitting in on his behalf.

As you know, Mr. Parkertestified before the House Natural Resources Committee in February of this year about these two bills; and I have provided as an attachment to my one-page statement the full text of his submission to that Committee, hoping that way to provide sufficient information to you and not to duplicate matters by repeating myself and therefore perhaps preventing more expeditious review of this material.

I think it is important for all of us to recognize that the reason why we have sought these bills is that it requires an act of Congress to settle land claims. That is why the Bay Mills Indian Community has sought legislation to resolve this matter, and that is why we are hopefully and respectfully asking for your support in having that done.

I know that the materials that Mr. Parker has presented have been in circulation, so I think it best and most appropriate for me to offer my assistance, if I can, in answering any questions that Members of the Committee might have and thank you for the opportunity to address the Committee.

Mr. CONYERS. Thank you so very much.

[The prepared statement of Ms. Tierney follows:]

PREPARED STATEMENT OF KATHRYN L. TIERNEY

TESTIMONY OF KATHRYN L. TIERNEY
Before the
JUDICIARY COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
On
MARCH 14, 2008

TO PROVIDE FOR AND APPROVE THE SETTLEMENT OF CERTAIN LAND CLAIMS OF THE BAY MILLS INDIAN COMMUNITY
(H.R. 2176)

Chairman Conyers, Ranking Member Smith, and members of the Committee, thank you for the opportunity to be here today to testify on behalf of the Bay Mills Indian Community regarding H.R. 2176. My name is Kathryn Tierney and I serve as in-house counsel to the Bay Mills Indian Community. I am appearing today at the request of Jeffrey Parker, President of the Executive Council, which is the elected government of the Tribe.

As you know, President Parker testified on this legislation last month when he appeared before the House Resources Committee. The background of the claim and its settlement was covered extensively during that hearing. President Parker's written testimony, which is provided again for the benefit of this Committee, provides a detailed summary of the claim and the Tribe's efforts to resolve it. We hope that this distinguished Committee will support the State's and the Tribe's resolution of this longstanding land claim so that all affected parties, including the current landowners of the Charlotte Beach lands, can bring this painful chapter of history to a close. As you know, only Congress can resolve the land claim and provide clear title to the Charlotte Beach residents.

I am happy to answer any questions that the Committee may have regarding this important legislation.

ATTACHMENT

TESTIMONY OF JEFFREY D. PARKER
Before the
RESOURCES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
On
FEBRUARY 6, 2008

TO PROVIDE FOR AND APPROVE THE SETTLEMENT OF CERTAIN LAND CLAIMS OF THE BAY MILLS INDIAN COMMUNITY
(H.R. 2176)

Mister Chairman, and members of the Committee, I am pleased to be invited to present testimony on behalf of the Bay Mills Indian Community on H.R. 2176. I speak here today in my official capacity as President of the Executive Council, which is the elected government of our Tribe. The legislation before you is extremely important to my people; its importance will be better understood by my description of the history of the Tribe and the origin of this controversy.

The Bay Mills Indian Community is comprised of the bands of Sault Ste. Marie area Chippewa who signed a series of treaties with the United States beginning in 1795. My Tribe's modern-day Reservation is located at the juncture of the St. Mary's River and Lake Superior, in the Iroquois Point area of Michigan's Upper Peninsula, and on Sugar Island, which is just east of Sault Ste. Marie, Michigan, in the St. Mary's River Channel. My Tribe is one of four in Michigan which has maintained continuous government-to-government relations with the United States since treaty times. We adopted a Constitution in 1936 under the Indian Reorganization Act, and codified as our form of government the traditional Chippewa public forum, in which all adult members comprise the General Tribal Council. I represent a direct democracy, which votes every two years to select officers, known as the Executive Council. Our total enrollment is approximately 1,750 members. It is on their behalf that I speak today.

I am very proud to testify in support of this legislation, as it represents the final step in obtaining redress of a great wrong done to our people over 100 years ago, a wrong that has imposed continuing consequences to the present day. The Bay Mills Indian Community is deeply grateful to Congressman Bart Stupak for sponsoring H.R. 2176, and to Congresswoman Candice Miller and Congressman Patrick Kennedy for co-sponsoring it. I also wish to express my thanks to Chairman Rahall and Ranking Member Young for understanding how important this legislation is to my people and for holding this hearing today.

History of Our Land Claim

Dr. Charles Cleland, PhD., a preeminent Great Lakes Indian ethnohistorian, has reviewed the history of the Hay Lake/Charlotte Beach land claim. His report on the claim, directed to the members of the Committee, is attached as Attachment 1. I will attempt to summarize his findings in my testimony.

The Sault Ste. Marie area Chippewa bands, among many other bands throughout the Upper Great Lakes, participated in a series of cession treaty negotiations by which large tracts of land were sold to the federal government. These lands, which later became a large portion of the State of Michigan, were ceded to the United States in 1807, 1819, 1820, and 1836. The terms of the Treaty of 1836 are particularly significant to the story of my people.

The Treaty signed by our ancestors in 1836 promised to set aside certain lands for us in perpetuity. When the 1836 cession Treaty was sent to Congress for ratification, however, the Senate unilaterally inserted a provision which limited protection of the lands reserved under it to a five-year term. As a result, over the course of a relatively short period of time the Chippewa lost hundreds of thousands of acres of land, in direct contravention of the express terms of the Treaty that had been signed by them.

In part to rectify the injustices done by the 1836 Treaty, the United States in 1855 entered into another Treaty with our ancestors by which new lands were to be reserved for our use. Among these lands was property specifically identified by legal description in the 1855 Treaty at Hay Lake (the area in modern times known as Charlotte Beach). My Tribe's ancestors signed the 1855 Treaty with the express understanding that the Hay Lake/Charlotte Beach land would be set aside for our exclusive use, and that it would be protected from alienation and European settler encroachment.

One day after the 1855 Treaty was concluded, however, the United States Land Office allowed that very land at Hay Lake to be sold to non-Indian speculators. Hence, despite the fact that the United States agents induced our ancestors to sign the 1855 Treaty on the understanding that the Hay Lake/Charlotte Beach land would be included within our reserved lands, and despite the fact that the Senate ratified the 1855 Treaty with the legal description of the Hay Lake/Charlotte Beach lands still in place, the Tribe lost that land by virtue of the United States Land Office's actions.

In order to recover the Hay Lake/Charlotte Beach land, which was of central importance to us for historical, food gathering, and cultural reasons, the Bands used their annuity money to buy back what portion of it that they could. Upon advice of the Bureau of Indian Affairs agent at the time, trust title to the Hay Lake/Charlotte Beach land was conveyed from the land speculators to the Governor of the State of Michigan, to protect the land from further alienation and encroachment by the Trade and Intercourse Act's prohibition against the alienation of Indian lands without express Congressional consent.

My ancestors hunted and lived on the Hay Lake/Charlotte Beach property for nearly thirty years undisturbed by the State of Michigan. In the 1880s, however, Chippewa County determined that it would impose taxes on the property. Even though he held trust title, the Governor of the State of Michigan failed to respond to the tax assessment in any manner whatsoever. Despite repeated requests from our people to the Bureau of Indian Affairs for help, the federal government also took no action. Because neither the federal government nor the State of Michigan acted to protect our lands as was required by the Trade and Intercourse Act, the County moved to foreclose on the property and our ancestors were evicted.

I want to make you aware of what the Bureau of Indian Affairs' own agent wrote in 1880 about the impending sale of our Hay Lake/Charlotte Beach lands:

> At the ``Sault", the Old Chief Shaw wa no is in very destitute circumstances, and much agonized as his land which amounts to some 300 acres bought by annuity money and deed in trust to the Governor of this State many years ago, has been sold for taxes...*The Old man wished me to do something for him or ask the Government to provide the means to cancel this claim for taxes,* He is Old, sick & Blind; and all his people are very poor, simply sustaining life by fishing, picking berries, or an odd days work which chance may throw in their way...

Emphasis added. G. Lee, Michigan Indian Agent, in a letter to the Commissioner of Indian Affairs dated August 1880.

In 1916, we again petitioned the Bureau of Indian Affairs for help when on behalf of the Community tribal member William Johnson wrote to the Bureau begging for assistance in regaining the Hay Lake lands. The Bureau rebuffed his petition.

In 1925, an attorney, John Shine, wrote again on the Tribe's behalf, begging the Bureau for help in recovering the Hay Lake property. The Bureau again rebuffed the Tribe's petition for help.

In the 1970s, the United States' own expert witness (widely considered to be the preeminent historian of Indians in the Great Lakes area) in the U.S. v. Michigan treaty fishing rights litigation highlighted the existence of the Hay Lake/Charlotte Beach claim in her expert report submitted to the Federal District Court for the Western District of Michigan. See Report of Dr. Helen Tanner, dated April 1974, for the United States in U.S. v. Michigan, Civ. Case No. 2:73 CV 26 (W.D. MI).

In the 1980s, the Bay Mills Indian Community repeatedly petitioned the Department of the Interior to include the Hay Lake/Charlotte Beach claim on its list of protected historical Indian claims pursuant to 28 U.S.C. Sec. 2415. Through a Field Office of the Office of the Solicitor, Interior erroneously denied our Tribe's petition for the simple and only reason that the Hay Lake/Charlotte Beach land was held in trust by the State rather than the federal government. (A copy of that determination letter is attached as Attachment 2.) The Field Solicitor's refusal was not legally supportable. Existing federal court opinions made clear that the Indian Trade and Intercourse Act protects Indian lands held by states, and Congress had specifically directed Interior to protect all historical Indian claims except those that ``had no legal merit whatsoever." (See section 3(a) of Pub. L. 97-394.) Further, the Field Solicitor's refusal was inconsistent with general Interior policy because in fact *Interior had included on the final list of protected historical claims a fair number of state-held lands, including some held for state recognized tribes.*

The Tribe was not the only entity seeking resolution of the Hay Lake/Charlotte Beach claim. Property owners in the area were contacting both the Department of the Interior and the local Congressman, seeking help in their efforts to obtain clean title to their land. An example of that effort is correspondence with then-Congressman Bob Davis, attached as Attachment 3.

In the 1990s, we tried to obtain redress in the courts. Our efforts were unsuccessful. Our federal court case was dismissed on a procedural technicality (the court found that the mere possibility that the Sault Tribe might have a claim to the Hay Lake/Charlotte Beach land prevented the case from going forward). We fared no better in the state courts, which were unable to address our equitable claim for land, and had little understanding of the federal Indian legal issues before them. In both forums, our claim was dismissed on procedural grounds, the merits of the Bay Mills claim to the land unaddressed. Additionally, while these cases were pending, the Tribe was informed by the Department of the Interior that no court decision could unilaterally extinguish its claim to the Hay Lake/Charlotte Beach land. Extinguishment of the Tribe's claim required Congress to act, with or without a court order approving a land claim settlement.

In 2002, we entered into direct settlement negotiations with the Governor of the State of Michigan to resolve the claim. To Governor John Engler's credit, he determined that it would work with our Tribe to address this long-standing grievance. Subsequently, we were able to forge a settlement that addresses the needs and concerns of the Bay Mills Indian Community, of the State of Michigan, of the people living within the Charlotte Beach land claim area, and of the people living in Port Huron. That settlement, executed by the Bay Mills Indian Community and the State in August 2002, and as recently amended by agreement with Governor Jennifer Granholm, is the backbone of the legislation here before you today.

I underscore this history because I want the Congress to understand the long-standing importance that this land has held for my people. I want the Congress to understand that this land claim is not about gaming, not about forum shopping, not about modern-day business deals. This land claim exists because of negligence by Land Office staff, historical inaction by Department of Interior staff, and abandonment of trustee obligations by the Governor. Resolution of this land claim is about finally securing just compensation for the Tribe, finally being able to close this painful chapter of our history, and finally being able to shift our focus to the future. It is about finally achieving justice.

The Settlement

In commencing settlement negotiations with the Governor of Michigan, the Bay Mills Indian Community well understood that no agreement would be possible without compromise. Because achieving closure to this long-standing wrong was very important to our community, we worked hard to reach an accommodation with the Governor by which a resolution to our claim would serve both our goals.

The Tribe's goals were to recover lost lands, and to receive monetary compensation due us for having lost possession of those lands . The Governor's goals were to quiet title to the claim area property without displacement of the people living there, to construct a settlement that

would not have an impact on the State's budget, and to ensure that any replacement lands would be located in a community desirous of our presence there.

The Settlement accomplishes both the Tribe's and the Governor's goals in a fair and equitable manner. Indeed, we would like to think that the spirit of mutual respect and cooperation with which these negotiations took place should serve as a model for how such difficult and emotionally charged issues can be resolved. In addition, I note that the general structure of the Bay Mills settlement is consistent with other land claims settlements already enacted by Congress. (See, for example, the Torres- Martinez Desert Cahuilla Indians Claims Settlement ratified in the 106th Congress and codified at 25 U.S.C. sec. 1778, in which that tribe's claim for trespass damages was resolved with replacement lands and a related gaming opportunity.)

Indian Gaming

We understand that there is a reluctance to allow Indian land claim settlements to be used to as vehicles for the expansion of Indian gaming. We share that concern. We think, however, that the United States owes it our people, particularly given the long and unfortunate history of our dealings with the United States, to take a hard look at the merits of this land claim, and to understand the proposed settlement in the context of our land claim rather than through the filter of modern controversies surrounding Indian gaming.

If we had never been kicked out of our Hay Lake/Charlotte Beach property, if either the United States government or the State of Michigan had honored and enforced the Trade and Intercourse Act when Chippewa County sought to (and achieved) our dispossession through tax foreclosure sales, then everyone, everywhere, would understand the Hay Lake/Charlotte Beach property to be ``Indian lands'' held by the Tribe prior to the enactment of the Indian Gaming Regulatory Act (IGRA). Had our ancestors never been evicted by county tax assessors, we would continue to live there to this day, and we would be entitled, under IGRA, to operate an Indian gaming facility there.

The Governor made clear that he would not agree to my Tribe's recovery of the Hay Lake/Charlotte Beach land because it could result in the eviction of current landowners in the Hay Lake/Charlotte Beach area. The Governor instead offered his support for the concept of finding new lands to replace the Hay Lake/Charlotte Beach property in return for our agreement that our trust title to the Hay Lake/Charlotte Beach property would be extinguished by Congressional action. By agreeing to provide replacement land to the Tribe, the Governor has alleviated the anxiety of persons currently living in the Hay Lake/Charlotte Beach claim area that they might some day be evicted from their homes. By agreeing that such replacement lands should be eligible for gaming, the Governor has agreed that the replacement land should in fact have the same status as the lands we have agreed to give up--that is, the replacement land should be treated as if it, too, had been held by the tribe since the mid-nineteenth century.

The Governor insisted that we locate replacement lands in a community that was desirous of hosting us. We have done that. As you will hear directly from representatives of Port Huron today, that community affirmatively wishes our Tribe to locate its replacement lands there.

I also wish to underscore that the Governor insisted that he would not approve appropriation of money from the State budget to compensate us for the damage done to us by having lost the use and benefit of these lands for more than a century. We have agreed to that; indeed, have agreed that we will try to achieve full compensation based on the money **we ourselves** make through economic development on the replacement lands. Those funds will generate the income we require in order to provide governmental services and programs to the Tribe's members and their families. Without that income, we would have no choice but to come back both to the State and the Federal Government, and insist that we be compensated for both parties' failure to protect our lands from alienation as required by the Trade and Intercourse Act.

For these reasons, I strongly and respectfully urge you to consider this settlement not through the lens of Indian gaming, but rather in the context of the long and well-documented history of the wrong done to my people, and in the context of the overall wisdom of a settlement crafted to create the greatest good for the most people.

Conclusion

I recognize that there are additional issues which may be of interest or concern to the Committee. I am happy to address any and all issues, and I welcome your questions today. I once again thank you for the opportunity to tell the Bay Mills Indian Community's story, and I respectfully urge you to support the efforts of the Bay Mills Indian Community, the citizens of Charlotte Beach and Port Huron, and the State of Michigan, by providing the necessary Congressional ratification of our settlement without further delay.

Mr. Chairman and members of the Natural Resources Committee of the U.S. House of Representatives:

My name is Charles E. Cleland and I am a Distinguished Professor Emeritus of Anthropology from Michigan State University. Since receiving my PhD in Anthropology from the University of Michigan in 1966, I have devoted my career to the study of the history and culture of the native tribes of the Upper Great Lakes region. I have authored several books and many journal articles on these topics and have likewise taught numerous courses related to the anthropology and history of the Great Lakes region. During my career and subsequent to my retirement from MSU in 2000, I have had frequent occasions to offer expert testimony in our federal courts as they were hearing cases involving treaty right issues.

I come before you today at the request of the Bay Mills Indian Community to discuss the historical events which precipitated the Charlotte Beach land claim over 130 years ago and which has been a point of bitter consternation for the Bay Mills Community ever since. My testimony today is also in support of H.R. 2176 which would resolve the long-standing Charlotte Beach land claim to the satisfaction of the Bay Mills Community.

The Charlotte Beach area is a part of the 13 million acre cession made by the Odawa (Ottawa) and Ojibwe (Chippewa) tribes of northern Michigan by the Treaty of Washington in 1836. By this cession the United States recognized the Charlotte Beach area to be part of the lands of the Ojibwe bands of Sault Ste. Marie. The Bay Mills Indian Community is a federally recognized successor in interest to five of the six bands that composed the Sault Ste. Marie Ojibwe.

On July 31, 1855 the Sault Ste. Marie bands became parties to the treaty of Detroit. This treaty was designed to settle the affairs of the Michigan Odawa and Ojibwe by allotting land in severalty to each family. These allotments were to be permanent homes guaranteed by the United States through certain restrictions against alienation which are described in the treaty. By practice, land was withdrawn near the locations of the various bands from which individuals could choose 40 or 80-acre parcels. Unfortunately, the allotment process was snarled, delayed, and often flawed by unforeseen circumstances.

In order to illustrate the historic relationship between certain parcels of land in the Charlotte Beach area of Chippewa County and the Bay Mills Indian Community I provide the following documented facts:

1. The Sault Ste. Marie Chippewa Chiefs who signed the Treaty of July 31, 1855 represented six separate and politically independent bands. These bands were composed of intermarrying families and were named from the geographic locations they frequented, or, more commonly, from their leaders. The six Sault Ste. Marie bands occupied the southeast coast of Lake Superior and its hinterlands from present day Marquette to Sault Ste. Marie and the St. Mary's River valley from the falls of the river to Drummond Island.[1]

2. In 1855 the Sault Ste. Marie Chippewa bands consisted of the following:
   a. *Oshaw-wan-no-ke-wain-ze* or *Oshawa-no*'s band, which was centered at the Rapids of the St. Mary's and the town of Sault Ste. Marie.
   b. *Waub-o-jig* or *Waishkee*'s band, which was centered at Waiskey's Bay.
   c. *Kay-bay-nodin*'s band, which had its summer village at the mouth of the Tahquamenon River.

d. *O-maw-no-maw-ne*'s band located at Whitefish Bay.

e. *Piawbe-daw-sung*'s band, which was centered at Garden River and Sugar Island.

f. *Shawan*'s band, which was located near Hay Lake on the St. Mary's River downstream from the rapids.[2]

3. In 1853 the people of *Oshawa-no*'s band, which then lived on a reservation that had been created by the Treaty of 1820 at the falls of the St. Mary's, were illegally displaced by the construction of the St. Mary's ship canal. Although *Oshawa-no* was given fishing privileges and a small island in the river as part of the compensation for the loss of the reservation by a Treaty of August 2, 1855, this band of Catholic Indians reestablished itself adjacent to the town of Sault Ste. Marie.[3]

4. The Treaty of July 31, 1855 set aside several reservations from which the people of the Sault Ste. Marie bands could choose allotments from unsold public lands which had been temporarily withdrawn from the market.[4]

5. On August 1, 1855, a week before the reserve land was withdrawn from public sale, two non-Indians, Joseph Kemp and Boziel Paul, purchased seven parcels of land on the Hay Lake reserve from the government. These purchases were apparently for the purpose of real estate speculation.[5]

6. Two years later on October 12, 1857 several Indian persons used pooled annuity funds from the 1855 Treaty to purchase land from Boziel Paul and his wife Marie. These parcels included Lots 1, 2, 3, and 4 of Section 7, T. 45N, R. 2E and Lot 1 of Section 18, T. 45 N, R. 2E.[6] These parcels include the present Charlotte Beach land.

7. On the advice of their Indian agent, the warranty deed for these parcels was written in the name of "Kinsley S. Bingham, Governor of the State of Michigan and his successor in office, in trust, for the use and benefit of the two bands of the Sault Ste. Marie Ottawa and Chippewa of Michigan of which *Oshawa-no* and *Shawan* were chiefs."[7]

8. This land was not purchased for the sole benefit of the individual purchasers, but for the bands to which they belonged.

9. The first allotment selections under the 1855 treaty were made in 1857. When the Hay Lake reservation, which had apparently been expressly made for the displaced band of *Oshawa-no* and the local band led by *Shawan*, was examined, it was determined that most of this reserve was flooded and uninhabitable. The little good, or high land, which was along the river, was the land that had been purchased by Paul and it was this land that was then privately purchased from Paul for the bands.[8]

10. In the meantime the other four Sault Ste. Marie Chippewa bands were making land selections in other places, mostly on Sugar Island and at Point Iroquois near the modern Bay Mills Community. Leaving aside the long, complicated details of the allotment process, by 1861 the bands of *Kay-bay-nodin, Omaw-no-maw-ne,* and *Waish-kee* made selections at Point Iroquois while *Piawabe-daw-sung's* band selected land on the east side of Sugar Island.[9]

11. By 1871 the people of *Oshawa-no's* and *Shawan's* bands had still not selected allotments. In that year special allotment agent John Knox reported new allotments at Sugar Island and some few at Hay Lake. These were likely to be members of *Oshawa-no*'s band. In December of 1871 agent Knox reported that previous agents

Long and Smith had both promised *Shawan*'s band allotments next to the land they had privately purchased at the Hay Lake reserve. He added that there was not sufficient desirable land to provide the Indians with the land they were entitled to under the 1855 treaty.[10]

12. The Hay Lake reserve (the area where Charlotte Beach is now located) was strongly associated with *Shawan*'s band because they traditionally occupied this territory and because they had been promised land in this area. They together with *Oshawa-no*'s band had already purchased private land there for their members.

13. Despite these facts there was not enough good land to allot *Shawan*'s band and in 1871 its families were still almost landless. This problem was solved when "after a long deliberation" the bands allotted at Iroquois Point under Chiefs *O-maw-no-maw-ne* and *Wawbe-ga-kake* (son and successor to chief *Kay-bay-nodin* who signed the 1855 Treaty) agreed to allow *Shawan*'s band to "become equal partners in selecting land claimed by the above chiefs and their bands."[11]

14. The people of *Shawan*'s band were thus allotted at Point Iroquois and were amalgamated with the people who eventually became the Bay Mills Indian Community.

15. In 1879 agent Luke Lea alerted the Indian Office to the fact that about 1,000 acres of land that had been purchased by Indians of the Sault Ste. Marie bands had been placed on the tax rolls. He estimated that this land could have been secured for about one dollar per acre but funds were not available for this purpose.[12]

16. The newly taxed land included that purchased for the use and benefit of *Oshawa-no*'s and *Shawan*'s bands in what is now the Charlotte Beach area of the old Hay Lake reserve. Although deeded to the Governor and his successor, the lands held for these bands was sold by the Auditor General of Michigan in 1884, 1885, and 1887 for taxes assessed from 1866 onward.[13]

17. By 1882 more than half of the Sault Ste. Marie Chippewa people were living on Sugar Island and in the City of Sault Ste. Marie. The remaining resided at Iroquois Point.

18. Clearly, the Bay Mills Indian Community as the successor group to the Point Iroquois bands can lay claim to the rights of *Shawan*'s band, which was one of the four original bands that formed the community. This is particularly so since at least two of the original Bay Mills bands officially decided to take in *Shawan*'s group. It is also clear that *Shawan*'s band had the major claim to the Hay Lake (and therefore Charlotte Beach) region but that *Oshawa-no*'s band also had a share in the Hay Lake area by virtue of purchase.

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[1] Treaty of July 31, 1855. 11 Stat. 621.

[2] Tanner, H. H. 1974 Report U.S.A. v. Michigan No. M 26-73C.A. U.S.D.C.

[3] Treaty of 1820. 7 Stat. 206.
Treaty of August 2, 1855. 11 Stat. 631.

[4] August 1, 1855. G. Manypenny to Commissioner of General Land Office.

[5] December 31, 1855. J. Johnston to H. Gilbert.

[6] US Patents. Chippewa County Court House, Liber 3, Page 10 and 149.

[7] Warranty Deed, Chippewa County Courthouse. Liber 3, page 150.

[8] October 2, 1858. A. Fitch to C. Mix.

[9] Tanner, H.H. 1974 Report U.S.A. v. Michigan No. M 26-73C.A. U.S.D.C. page 21.

[10] NAM M234 R. 409:684-689. December 8, 1871. J. Knox to F. Walker.

[11] NAM M234 R. 409:684-689. December 8, 1871. J. Knox to F. Walker.

[12] NAM M234 R. 415:123-130. February 4, 1880. L. Lee to Commissioner of Indian Affairs.

[13] State tax land deeds. Chippewa County Courthouse. Liber 11, page 64, 100, 101, and 516.

United States Department of the Interior

IN REPLY REFER TO:

OFFICE OF THE SOLICITOR
Office of the Field Solicitor
686 Federal Building, Fort Snelling
Twin Cities, Minnesota 55111

BIA.TC.3776

June 24, 1992

Mr. Earl J. Barlow
Area Director
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, Minnesota 55401

Attn: Rights Protection

Re: Rejection of Claim - No. F60-469-0010

Dear Mr. Barlow:

We have at your request again reviewed the above referenced claim and related materials in the file.

It is our opinion that the claim should be rejected for the reasons stated in our previous letters of October 21, 1982, and January 17, 1985. We are closing our file in this matter.

Sincerely,

Jean W. Sutton
For the Field Solicitor

Enclosure

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

Real Estate
Technical Services
BCCO 2498

AUG 17 1990

Honorable Robert W. Davis
Member, United States House
of Representatives
144 S. 2nd Street
Alpena, Michigan 49707

Dear Mr. Davis:

Thank you for your letter of July 20 on behalf of Ms. Carla Syrstad of Barbeau, Michigan. Ms. Syrstad would like an updated status on her case which involves clouded title on land within the Charlotte Beach Subdivision in Barbeau, Michigan.

Because this case may involve a claim identified pursuant to the Indian Claims Limitation Act of 1982, we are forwarding your inquiry to our Minneapolis Area Office (Bureau of Indian Affairs, 15 South 5th Street - 10th Floor, Minneapolis, Minnesota 55402) for a direct reply. That office maintains administrative jurisdiction over certain Indian lands in the State of Michigan.

The Minneapolis Area Office will provide you with a direct response within 4 to 6 weeks.

Sincerely,

/s/ MARSHALL M. CUTSFORTH

Deputy to the Assistant Secretary -
Indian Affairs (Trust and Economic
Development)

Copy to your Washington Office

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Superintendent, Michigan Agency

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ROBERT W. DAVIS
11TH DISTRICT, MICHIGAN

COMMITTEES:
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MERCHANT MARINE AND FISHERIES

Congress of the United States
House of Representatives
Washington, DC 20515

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1-800-562-6882

July 20, 1990

Office of Indian Affairs
U. S. Department of Interior
Interior Building
C Street between 18th & 19th Streets
Washington, D. C. 20240

Dear Madam or Sir:

Because of my desire to be responsive to all of my constitutents' inquiries, your consideration of the attached is appreciated.

Please investigate the statements made therein and provide a full report on your findings to my Alpena district office to the attention of Jerry Newhouse, returning the correspondence with your reply.

Thank you for your attention.

Sincerely,

Bob Davis

ROBERT W. DAVIS
Member of Congress

Enclosure

DISTRICT OFFICES:
☐ 2400 U.S. 41 WEST, MARQUETTE, MI 49855, (906) 228-3700
☐ 111 N. MAIN STREET, CHEBOYGAN, MI 49721, (616) 627-4803
☐ 116 N. 22ND STREET, ESCANABA, MI 49829, (906) 786-4504
☐ CITY-COUNTY BUILDING, SAULT STE. MARIE, MI 49783, (906) 635-0405
☐ 147 W. MAIN STREET, GAYLORD, MI 49735, (517) 732-3161
☐ 100 PORTAGE, HOUGHTON, MI 49931, (906) 482-2464
☐ 144 E. 2ND STREET, ALPENA, MI 49707, (517) 356-2035
☐ 318 W. MITCHELL STREET, PETOSKEY, MI 49770, (616) 347-4160

Congressman Bob Davis
144 S. 2nd. Ave.
Alpena, Michigan 49707
July 16,1990

Several years ago I made inquiries to your office about the legal ownership of the properties in the Charlotte Beach Subdivision in Barbeau, Michigan. The residents had, then, just become aware that we could not get title insurance for resale or financing. We learned that the property was sold just before a Federal Treaty with the Indians went into affect. I am on vacation and don't have my records with me, but , if memory serves me right, the land was then put in trust with the State and was finally sold for non-payment of taxes. The opinion given at the time was that it did not appear to be part of the Treaty and the Federal government would possibly release it and we could then pursue the case on a state level.

Maybe, 4 years ago I was told the person reviewing cases had left that position and no one had replaced him. About 2 years ago my brother Richard Reinhart was trying to buy a summer home and made inquiries with an Indian Affairs office in Washington D.C. and again no progress seemed to be made. Now just this passed spring a Bill Isaacson who now resides in Escanaba and was trying to sell a home here talked to Mr. Davis' representative in Escanaba and came away with the impression some action may be in the works.

So, to finally get to the point, I would like to know the latest status of the case. Is there more that my neighbors and I could do to speed things up?

Although, this is our home of record, my husband is in the Coast Guard and we are living in Wisconsin. I will be in Barbeau until the middle o August. After that time please contact me in Wisconsin. Thank you for your efforts.

Sincerely,

Carla Syrstad
30 BB Charlotte Beach
Barbeau, Michigan 49710
1-906 632-0265

or,

4821 Church Rd.
Platteville, Wisconsin 53818
1-608 568-7670

319 Court Street
Sault Ste. Marie, MI 49783-2194

(906) 635-6330
(906) 635-6325 FAX

Earl Kay
Chairman

CHIPPEWA COUNTY COMMISSIONERS

February 1, 2008

Honorable Nick J. Rahall II, Chairman
Honorable Don Young, Ranking Member
United States House of Representatives
Committee on Natural Resources
Washington, DC 20515

Re: Value of Real Property at Charlotte Beach, Chippewa County, MI

Dear Sirs:

As the issue of the impacts of the potential ratification of the land claim settlement between the Bay Mills Indian Community and the Governor of the State of Michigan is of current concern to you and the members of your committee, I write to confirm to you the real impacts that the land dispute which is the subject of your on February, 6, 2008, has had on the property owners in Charlotte Beach, Chippewa County, Michigan.

As Chairman of the county Board of Commissioners and a life-long resident of the area, I would like you to be aware that the land dispute surrounding properties in our Charlotte Beach area has had, and continues to have, a real and significant impact on the values of the property. For many years, and up to the present time, the dispute between the Tribe and the State of Michigan concerning the taking of these lands has clouded the titles to those properties making the obtaining of "clear" title, impossible.

The inability of our residents to receive such title, thus title insurance, has been and continues to be a major impediment to the transfer of these properties at Charlotte Beach, making the sale of an ownership interest in any of these properties at fair market value difficult, to say the least. Until or unless this situation is rectified, the property values in this area will remain greatly reduced, hindered by these title issues for now and into the future.

Thank you for taking this issue and my comments into consideration.

Sincerely,

Earl Kay
Chairman

CURRICULUM VITA

Charles E. Cleland
2008

Current Titles

Distinguished Professor Emeritus of Anthropology, Michigan State University
Curator Emeritus of Great Lakes Archaeology and Ethnology, MSU Museum

Address

19899 Gennett Road, Charlevoix, MI 49720
(231) 547-6220
e-mail: ccleland@charlevoixwireless.com

Education

B.A. Biology, Denison University, Granville, OH 1958
M.S. Zoology, University of Arkansas, Fayetteville 1960
M.A. Anthropology, University of Michigan, Ann Arbor 1964
Ph.D. Anthropology, University of Michigan, Ann Arbor 1966

Professional Organizations

Society for American Archaeology
American Society for Ethnohistory
Society for Historical Archaeology
Conference on Michigan Archaeology
Michigan Archaeology Society
Registered Professional Archaeologist

Offices Held

President--Society for Historical Archaeology 1973
Chair--Michigan Historical Preservation Advisory Council 1970-1972
Member--Committee on the Recovery of Archaeological Remains, Society for American Archaeology 1974-1978
President--Society of Professional Archaeologists 1977-1978
Chair--Coordinating Council of National Archaeological Societies 1977
Grievance Coordinator--Society of Professional Archaeologists 1985-1987
Member--Executive Board of Society for Historical Archaeology 1982-84
Chair--Committee on Ethics, American Anthropological Association 1986
Member--Executive Committee, Society of Professional Archaeologists 1986-88
Member--Executive Committee, Society of Professional Archaeology 1993-1995

Honors

Distinguished Faculty Award--Michigan State University 1978
Distinguished Service Award 1991--Society of Professional Archaeologists
Presidential Recognition Award – 1997—Society of Professional Archaeologists
J.C. Harrington Medal – 2002—Society for Historical Archaeology

Distinguished Service Award – 2003 – Register of Professional Archaeologists
Presidential Recognition Award – 2004 – Register of Professional Archaeologists
Festschrift Volume – 2004- An Upper Great Lakes Archaeological Odyssey: Essays in Honor of Charles E. Cleland. Edited by William A. Lovis. Detroit: Wayne State University Press.

Field Research:

Two million dollars in grants for research on 20 major field projects [1967-2000].

Publications:

1961

The Significance of Animal Bones from Archaeological Sites. Newsletter of the Arkansas Archaeological Society 2(5):1-8. Fayetteville.

1963

A Late Archaic Burial from Washtenaw County, Michigan. Michigan Archaeologist 9(3):41-44. Ann Arbor.

1964

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Faunal Remains from Bluff Shelters in Northwest Arkansas. Bulletin of the Arkansas Archaeological Society 6(2-3):39-62. Fayetteville.

Reports on the Beta Activity of Bone Samples from Various Archaeological Sites. In A. Jelinek and J. Fitting, Studies in the Natural Radioactivity of Prehistoric Materials. Museum of Anthropology, University of Michigan, Anthropological Papers 25.

1965

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1966

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The Prehistoric Animal Ecology and Ethnozoology of the Upper Great Lakes Region. Museum of Anthropology, University of Michigan, Anthropological Papers 29:304. Ann Arbor.

1967

(with J. Kearney) The Vertebrate Fauna of the Chesser Cave Site, Athens County, Ohio. In Studies in Ohio Archaeology, edited by O. Prufer and D. McKenzie, pp. 43-48. The Press of Western Reserve University, Cleveland.

(with J. Kearney) The Vertebrate Fauna of the Graham Village Site, Hocking County, Ohio. In Studies in Ohio Archaeology, edited by O. Prufer and D. McKenzie, pp. 79-94. The Press of Western Reserve University, Cleveland.

(with J. Kearney) The Vertebrate Fauna of the Morrison Site, Ross County, Ohio. In Studies in Ohio Archaeology, edited by O. Prufer and D. McKenzie, pp. 206-209. The Press of Western Reserve University, Cleveland.

1968

(with L. Stone) Archaeology as a Method for Investigating the History of the Erie Canal System. Historical Archaeology 1967 1(1):63-69.

(with J. Fitting) The Crisis of Identity: Theory in Historic Sites Archaeology. In The Conference on Historic Site Archaeology Papers 1967 2(2):124-138. Raleigh, NC.

(with G. Peske) The Spider Cave Site. In The Prehistory of the Burnt Bluff Area (assembled by J.Fitting). Museum of Anthropology, University of Michigan, Anthropological Papers 34:20-60. Ann Arbor.

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1969

(with J. Brown) The Late Glacial and Early Postglacial Faunal Resources in Midwestern Biomes Newly Opened to Human Adaptation. The Quaternary of Illinois: University of Illinois College of Agriculture Special Publication 14:114-122. Urbana.

(with E. Wilmsen) Three Unusual Copper Implements from Houghton County, Michigan. The Wisconsin Archaeologist 50(1). Menasha.

(with R. Clute) A Late Woodland Burial from Muir, Ionia County, Michigan. Michigan Archaeologist 15(3):78-85. Ann Arbor.

(with J. Fitting) Late Prehistoric Settlement Patterns in the Upper Great Lakes. Ethnohistory 16(4):289-302. Tucson.

1970

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Comparison of the Faunal Remains from French and British Refuse Pits at Fort Michilimackinac: A Study in Changing Subsistence Patterns. Canadian Historic Sites: Occasional Papers in Archaeology and History 3:7-23. Ottawa.

1971

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(editor and contributor) The Lasanen Site: An Historic Burial Locality in Mackinac County, Michigan. Publications of the Michigan State University Museum Anthropological Series. 1(1). East Lansing.

1972

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From Sacred to Profane: Style Drift in the Decoration of Jesuit Finger Rings. American Antiquity 37(2):202-210. Ann Arbor.

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1973

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The Prehistoric Settlement of Northwest Lower Michigan. In Geology and the Environment (Publication of the Michigan Basin Geological Society), pp.88-89. Lansing.

An Introduction to the Cultures and Histories of the Indians of the Great Lakes. In The Art of the Great Lakes Indians, pp.xi-xiv. Flint Institute of Arts. Flint.

Notes on a Dog Skull from Nanook Component 2. In Archaeology of the Lake Harbour District, Baffin Island (by Moreau S. Maxwell), Archaeological Survey of Canada Paper 6:353-356. National Museum of Canada. Ottawa.

1974

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1975

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1976

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(editor and contributor) Cultural Change and Continuity: Essays in Honor of James Bennett Griffin. Academic Press, New York.

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1977

(editor) For the Director: Papers in Honor of James B. Griffin. Museum of Anthropology, University of Michigan, Anthropological Papers 61. Ann Arbor.

1979

Review of Method and Theory in Historical Archaeology, by Stanley South (NY:Academic Press, 1977) and Research Strategies in Historical Archaeology, edited by Stanley South (NY:Academic Press, 1977). American Historical Review 84(3):711-717.

1981

Avoiding Conflict in Sponsored Archaeological Research. Texas Archaeologist, Newsletter of the Texas Archaeological Society, 25(2).

1982

The Inland Shore Fishery of the Northern Great Lakes: Its Development and Importance in Prehistory. American Antiquity 47(4):761-784.

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1983

Merchants, Tradesmen, and Tenants: The Economics of the Diffusion of Material Culture on a late Nineteenth Century Site. In Historical Archaeology of the Eastern United States: Papers from the R.J. Russell Symposium, edited by R.W. Newman. Geoscience and Man, vol. XXIII. Baton Rouge.

1984

Naub-cow-zo-win Discs from Northern Michigan (with R. Clute and R. Haltiner). Midcontinental Journal of Archaeology 9(2):235-249.

1985

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1986

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1987

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Pilot of the Grand: Papers in Tribute to Richard Flanders (C. Cleland and T. Martin, co-editors). Michigan Archaeologist 36(1-2).

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From Ethnohistory to Archaeology: Ottawa and Ojibwa Band Territories of the Northern Great Lakes. In Text Aided Archaeology. Barbara Little (editor), Caldwell, N.J.: The Telford Press.

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1992

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Obituary - Earl Jean Prahl (1927-1991) (with William Lovis), Michigan Archaeologist 37(4): 299-304.

Review of Disputed Waters: Native Americans and the Great Lakes Fishery by Robert Doherty, in Ethnohistory 39(1).

1993

Economic and Adaptive Change Among Lake Superior Chippewa of the Nineteenth Century, in Approaches to Postcontact Change in the Americas: Ethnohistory and Archaeology, D. Rogers and S. Wilson (editors), New York: Plenum Press.

Editor and contributor. The Society for Historical Archaeology and Its First Twenty-Five Years. Historical Archaeology. 27(1).

Review of The Juan Pardo Expeditions: Exploration of the Carolinas and Tennessee 1566-68 by Charles Hudson, 27. pp117-118.

1995

Review of The Fur Trade Revisited ed by J. Brown, W. J. Eccles and D. Heldman in Michigan History Magazine. Fall.

1996

The Samels Field Site: An Archaic Base Camp in Grand Traverse County, Michigan (with David Ruggles), in Investigating the Archaeological Record of the Great Lakes State: Essays in Honor of Elizabeth B. Garland, ed. by M. Holman, J. Brashler and K. Parker. New Issues Press: Kalamazoo, p. 55-99.

1997

Review of Historical Ecology: Cultural Knowledge and Changing Landscapes. Ed. By Carole Crumley, Historical Archaeology 31(2):119-121.

1998

From the Northern Tier: Essays in Honor of Ronald Mason. ed. by C. Cleland and R. Birmingham. Wisconsin Archaeologist. Vol. 79(1) 240pp.

The Mason-Quimby Line Revisited (with M.B. Holman and J.A. Holman) in From the Northern Tier: Essays in Honor of Ronald J. Mason. ed by C. Cleland and R. Birmingham. Wisconsin Archaeologist 79(1) pp. 8-27.

1999

Traders, Indians, and Middlemen: the Foundations of the British North American Fur Trade **in** Old and New Worlds ed. by Geoff Egan and R. L. Michael. Oxbow Books: Oxford. pp. 322-330.

Cultural Transformations: the Archaeology of Historic Indian Sites in Michigan, 1670-1940 **in** Retrieving Michigan's Buried Past the Archaeology of the Great Lakes State ed. by John R. Halsey. Cranbrook Institute of Science: Bloomfield Hills. pp. 279-290.

2000

Preliminary Report of the Ethnohistorical Basis of Hunting, Fishing and Gathering Rights of the Mille Lacs Chippewa. **In** Fish in the Lakes, Wild Rice and Game in Abundance. Testimony on Behalf of Mille Lacs Ojibwe Hunting and Fishing Rights. J. M. McClurken compiler. Michigan State University Press: East Lansing, pp. 3-140.

Some Thoughts on the Importance of Material Culture, A Preface to Interpretations of Native North American Life: Material Contributions to Ethnohistory ed. by Michael Nasssaney and Eric Johnson. University Press of Florida: Gainesville.

2001

The Place of the Pike (Gnoozhekaaning): The History of the Bay Mills Indian Community. University of Michigan Press: Ann Arbor. 146 pp., 125 photos, 9 maps.

Historical Archaeology Adrift? Historical Archaeology Vol. 35 (2) 8 pp.

2002

Archaeological Survey of the Antrim Creek Natural Area, Antrim County, Michigan. Antrim Natural Area Commission, Bellaire, Michigan. 51 pp., 12 figures.

The Elders Speak: Natural Resource Use by the Forest County Potawatomi Community. (with Richard A. Carlson). The Forest County Potawatomi Community. Crandon, Wisconsin. 43 pp., 8 figures.

2004 Review of The Michigan Roadside Naturalist by J. Alan Holman and Margaret B. Holman. In Michigan Academician XXXV (4):493-494.

(with Vergil Noble). Memorial: George Irving Quimby, 1913-2003. *Historical Archaeology* 38 (2):124-132.

2008 (with T. Majewski) James Ayres, Harrington Medal Award Recipient 2008. *Historical Archaeology* 42 (1).

Forthcoming

The History of Indian Treaty Litigation in the Upper Great Lakes Region. University of Michigan Press. Ann Arbor.

Mr. CONYERS. To our female attorneys, Ms. Walker and Ms. Tierney, here's what I'm thinking about. The Charlotte Beach lands have been in private hands since the late 19th century. When did your tribes interest in pursuing those lands first manifest itself?

Then think about this with me. Since the land claims are against the State of Michigan, what do you imagine the Federal Government has to do with this?

And, finally, why do the two land settlement agreements break with the 1993 compact that both your tribes entered into with the State of Michigan, particularly with the issue of sharing revenues?

And then, Chief Cantu, how easy would it be for the Saginaw Tribe to assert a claim like the two asserted here? And if you did, what do you think the geographical limits on where you could build a casino would play into that?

I'll let the ladies start first, and then the Chief will follow up.

Ms. WALKER. And, Mr. Chairman, I will defer first to Ms. Tierney, since she in Bay Mills was the first to pursue the land claims, if we start with your first question.

Ms. TIERNEY. Thank you.

The Bay Mills Indian Community has always been federally recognized. It has had that name since it was organized under the Indian Reorganization Act in 1936. But, prior to that, it was considered the Indian people living on or near Sault St. Marie. It is in that context that this claim first arose in 1857.

The efforts to resolve it go back that far; and if you look at Mr. Parker's testimony before the House Resources Committee, he gives you a time line starting at the bottom of page 3 and through page 4.

Let me quickly repeat that in a summary fashion. The bank sought to protect land that they wished to live on permanently by placing it in trust with a Governor of the State of Michigan named Kingsley S. Bingham and his successor in office, at the recommendation of the superintendent of the Michigan agency, thinking that that would be the best way to ensure that land speculation, et cetera, could not result in the loss of the land to the Indian owners.

In the 1870's, for some reason that no one has ever been able to determine, the land was placed on the tax roll of Chippewa County, which is still the county in which these lands are located, and was sold for tax sales in 1874 and 1875. That immediately resulted in disputes and claims and requests to the United States to fix this matter, to obtain the land back; and that effort went into the following century.

There is correspondence going back to 1916, 1920, 1925, 1930's, all trying to obtain this land back. The correspondence at that time was with the United States, and those documents are referenced in materials that Mr. Parker submitted to the House Resources Committee and a copy of which has been provided to this Committee.

All of that correspondence indicates that the United States does not have a role to play in obtaining the land back from the subsequent owners through the tax sales because the United States did not own it at the time. The trust was not with the United States. It was with the Governor of the State of Michigan.

In the 1970's, there was an effort again to bring up this issue to the 2415 process, which this Committee, I am sure, is quite familiar with. It was a statute of limitations provision in which claims for trespass against lands held for Indian people had to be filed for money damages or forever be lost.

There was an initial deadline of 1976, I believe it was, that was extended until the early 1980's. This claim again was identified pursuant to that process and subsequently rejected by the Secretary of Interior, stating that in order for it to be a 2415 claim, again title to the land it had to have been at least at one point when the trespass occurred in the United States. Because it was in trust with the Governor, it was not an appropriate claim under 28 USC 2415.

Subsequently to that, Bay Mills sought its own way to resolve this matter by filing suit both in Federal court against all the landowners currently holding title in that area, as long as anyone else who had an interest in the property—now we're including banks, road commission, anyone who had an appreciable property interest.

The litigation, as everyone has noted, resulted in a dismissal on procedural grounds due to the fact that the Sault Ste. Marie Tribe was identified as an indispensable party who could not be joined without its consent.

The case was dismissed. The dismissal was upheld by the Sixth Circuit. The efforts to obtain relief from the State of Michigan resulted in a claim filed with its court of claims. That was rejected, saying the statute of limitations had run.

It was only after those efforts were gone through without success and the fact that the property owners were still seeking to have relief from the clouds on their title that the effort was made by the Governor then of the State of Michigan, John Engler, to sit down with the Bay Mills Indian Community and reach an agreement, which was made in August of 2002.

Mr. CONYERS. Chief Cantu, I presume you're in complete agreement with these observations?

Chief CANTU. Yes, I believe so.

Mr. CONYERS. What do you think about the question that I asked you?

Chief CANTU. It's been a little bit since you asked that question, and I would ask if you could repeat that for me.

Mr. CONYERS. How difficult would it be for the Saginaw Tribe to assert a claim like the two that are being put forward by the counsels to your left?

Chief CANTU. Well, I think that would lower the bar for any land claim that would be out there.

The claims should be verified by a court. Without verification of such claims by an act, then, yes, the Saginaw Chippewa Tribe and many others could also establish a lands claim anywhere else.

Mr. CONYERS. What's your feeling about this conversation we're in, Mr. Artman?

Mr. ARTMAN. I think Ms. Tierney's recitation of the facts is accurate, and I just want to underline in there that in her recitation of the facts this was a settlement of land claims between the State and the tribe. As the tribe's trustee, we weren't involved in this latter end process. At the very beginning, we provided the money to

purchase the initial lands which were lost through the tax sales, but through this we weren't involved in it. And, as indicated by Ms. Tierney, the 2415—it was rejected under the 2415 claim as well by the Department back in the '80's.

You asked about the distance of Chief Cantu and how this could—this settlement created additional settlements for other tribes. I don't know that this may set up——

Mr. SENSENBRENNER. Excuse me, Mr. Artman. Would you mind hitting the button? I don't think your mike is on.

Mr. ARTMAN. I'm sorry.

This settlement of a land claim may or may not set up a precedent for additional land claims themselves. I think that a lot of that precedence would also have to be rooted in the history that's out there.

One of our biggest concerns, though, with this is the precedent or the road map that this may create to circumvent the Indian Gaming Regulatory Act itself, again, by putting in Class III provisions or provisions that you might normally find in a Class III compact that goes through the approval of the tribal council and the State itself. And in the State of Michigan I believe that the Attorney General's opinion is that it has to go through the Governor's office as well as the State legislature.

You are circumventing the State process, it seems; and then you are also circumventing the Federal process as laid out in the Indian Gaming Regulatory Act by getting the approval of the Secretary of the Interior.

Mr. CONYERS. Thank you very much.

Steve Chabot.

Mr. CHABOT. Thank you very much, Mr. Chairman.

I'm filling in for the Ranking Member, Lamar Smith, now; and he gave an opening statement. So I'll refer to that opening statement in which Lamar Smith indicated that both Chairman Conyers and he opposed these two bills because they would, well, among other things, transfer land from Michigan to the two tribes in order to build—in which they could build casinos or other gaming establishments.

And one of his concerns was that building more casinos could lead to more people becoming compulsive gamblers and also the linkage to higher rates of criminal activity. I share those concerns as well, as I know that many other Members of Congress do; and I would invite any of the members of the panel to briefly comment on that. Because I have one more question in the 5 minutes that I have allotted to me, so we can either go down the line or anybody can jump right in.

Ms. Walker, I see you going for the buzzer there, so——

I had a short answer, and I think that the question really isn't whether we need another casino in Michigan, and whether they were going to lead to the bad elements that follow from additional casino gambling that the Committee has noted today. Really, the question is about whether Congress will participate in the settlement of these very longstanding land claims that, according to testimony, and certainly my review of the record and my participation in this process, are quite valid. They are longstanding.

Ms. Tierney has recited very carefully the history of Bay Mills' efforts to try to get these resolved. I think that focusing on the addition of casinos really takes away from what these bills are really trying to accomplish, which is really settling these long-term land claims once and for all to the satisfaction of the tribes, the State, and the Charlotte Beach landowners.

Mr. CHABOT. Anybody else want to comment, or should I go on to my second question?

Chief Cantu, did you want to comment?

Chief CANTU. Thank you. If this was a legitimate land claim, then why was testimony given by the Sault Ste. Marie Tribe and the Bay Mills Tribe about the importance of developing the gaming, how it would create jobs. Our whole position is that this is a valid land claim. Let's take all of those provisions out of there and let's get it settled.

Mr. CHABOT. Let me go on with my second question. Again, this is from Mr. Smith's opening statement. He indicates that the Progaming National Congress of American Indians itself stated, "Even after the advent of gaming Indian reservations continue to have a 31 percent poverty rate and 46 percent unemployment rate." They also note that Indian health and education statistics are among the worst in the country.

So, again, getting back to the point, and I know that you are talking specifically about land claims, but the implications to many of us up here is the fact that this could result in additional casinos or gaming establishments going up, and many of us consider that to be not necessarily in the best interest of the public because of the associated ills that go often times with gaming.

But, again, if one is arguing that there are good things that come from this, how do you respond to those continuing high levels of poverty and a 46 percent unemployment rate, despite the fact that gaming is available on a number of reservations? So if anybody wants to touch on that.

Mr. Artman. I see you going first.

Mr. ARTMAN. Thank you very much. I think the statistics often times don't show the whole picture. There are some very successful tribal casinos out there, there are some unsuccessful tribal casinos out there. But the fact remains success is largely driven by location.

Many of the reservations, in fact, a great majority of the reservations across the United States, are located in the areas that aren't accessible to a market for gaming. So the ills that have affected reservations for decades still exist today, even with gaming.

Gaming is not the cure-all. Tribes across the Nation, with or without gaming, are looking for that economic development, whatever that may be. So you still do have large swatches of unemployment throughout Indian Country, crime is larger than the national average, and education statistics for the students are lower than the national average. These are all things that we tackle on an everyday basis at the Department of Interior, and gaming is just a portion of that.

The issues and ills and successes in Indian Country are difficult to categorize under a general category of all of Indian Country. You have to look at it on a regional, or even a local basis.

Mr. CHABOT. Mr. Chairman, I note my time has expired, so I yield back the balance of my time.

Mr. CONYERS. The Chair notes the presence of Darrell Issa, the gentleman from California. But I will recognize Howard Coble now.

Mr. COBLE. Thank you, Mr. Chairman. I appreciate that. Good to have you all with us.

Mr. Artman, does the Indian Gaming Regulation Act require a tribe that receives a transfer of land to enter into an agreement about the use of that land with the State where the land is located?

Mr. ARTMAN. There are two portions of that question, or two things we have to address in that question, Congressman. First of all, the land itself. The land itself comes, before you can game on it, the land has to be held in trust by the United States. The United States takes the land into trust under the Indian Reorganization Act, the regulations, the 151 regulations specifically a part of that.

During that process, the State has the opportunity, as well as local communities have the opportunity to comment on taking that land into trust. Where the State plays an even larger role, looking at the additional gaming portion of that question, is during the Indian Gaming Regulatory Act Class III compacting process. In order to engage in Class III gaming on land that is in trust or on the reservation, the tribe and the State have to agree to a compact, and then that is submitted to the Department of the Interior.

So the State certainly has a larger, very large role in the development on how that land will be used for gaming purposes during the IGRA process.

Mr. COBLE. Do these bills ensure that such an agreement will be made?

Mr. ARTMAN. These bills seem to circumvent the Indian Gaming Regulatory Act process by inserting at the congressional level here many of the provisions you might normally find in a Class III compact. These are things that are regulations, and I believe even the Indian Gaming Regulatory Act, Congress, in drafting that, would prefer to be negotiated between the tribal government and the State government.

Mr. COBLE. Thank you, sir.

Chief, does the Michigan State Constitution require voter approval for additional gaming establishments?

Chief CANTU. Yes, it does.

Mr. COBLE. Well, has the State held a referendum on the plan for these lands?

Chief CANTU. I am not sure that they have.

Mr. COBLE. Ms. Walker, one side contends that the Michigan State Constitution requires voter approval for new gaming establishments, is my interpretation. It is

furthermore my interpretation that you claim there is exemption to the referendum rule for the Indian gaming.

Now I am going to ask you which of the two positions is accurate, and I think you are getting ready to tell me.

Ms. WALKER. I am getting ready to refer to the letter that John Wernet has provided, addressing this very issue as to whether the settlement agreements would constitute an amendment of the com-

pact and thereby whether the amendment of the compact would require voter approval.

There has been recent Supreme Court decision in the *Taxpayers of Michigan Against Casinos v. Michigan* in which the compacting process was upheld. The amendment to the compacting process was upheld without requiring a new legislative approval for that amendment.

But getting back to the other underlying issue, whether these bills constitute an amendment, it is our view, obviously, that they do not, and that is what the Governor has said, that is what the testimony before the Natural Resources Committee has determined, that these are not amendments to the compact, and that in fact the compact allows these bills to go forward consistent with their provisions.

Mr. COBLE. I thank you.

Ms. Tierney, Mr. Artman is here representing the Department of the Interior, who has expressed opposition to these transfers.

Now what do you say, Ms. Tierney, when one would say that it is a perhaps unwise or untimely or dangerous precedent to allow the established department procedures to be circumvented? What do you say to that?

Ms. TIERNEY. Actually, sir, I do not believe that this legislation controverts established procedures. There is significant and numerous precedents for this body, meaning the Congress of the United States, to direct the Secretary of the Interior to accept title in trust to land on behalf of a specific Indian tribe. So in that sense, there is no precedent being established. In fact, there is also legislation that has been passed in previous Congresses not only directing the land to be taken into trust, but specifically allowing gaming to occur. There are references to those particular provisions in Mr. Parker's testimony. I am not going to bore everyone by trying to find it while I sit here.

So in that sense, I am not sure what Mr. Artman has in mind by stating that this is setting precedent or circumventing procedures in a way that has never occurred in the past, because it has.

Mr. COBLE. Mr. Chairman, I know you like us to conclude before that red light illuminates.

Mr. CONYERS. Take all day.

Mr. COBLE. You are a very generous Chairman. I yield back.

Mr. CONYERS. Hank Johnson, the gentleman from Georgia.

Mr. JOHNSON. Thank you, Mr. Chairman. I would like to ask who owns the land in Port Huron and in Romulus that your two tribes would receive in these land deals.

Ms. TIERNEY. The Bay Mills Indian community's legislation and agreements specifically identify particular parcels, both of which are currently in private hands, both of which are subject to understandings that the title to them will not transfer out of private hands unless or until this legislation is enacted.

Mr. JOHNSON. So land is owned by some person who, or entity that is not identified currently. Would you wish to reveal that? I am sure it is public record.

Ms. TIERNEY. I do not have the specific names. I can provide that.

Mr. JOHNSON. Is it individuals?

Ms. TIERNEY. The owners of record, they are on the title as recorded in the register of deeds office for St. Clair County. I just don't want to give the wrong information. I would like to check in order to provide it.

Mr. JOHNSON. How was it that those lands were arrived at as the ones that would be subject to the Indian claim?

Ms. TIERNEY. These were lands that——

Mr. JOHNSON. I mean I am sure that these particular parcels that you have in mind are a part of a large—I mean it is part of the State of Michigan.

Ms. TIERNEY. They are.

Mr. JOHNSON. How is this particular part of the State selected for this particular action?

Ms. TIERNEY. For the Bay Mills Indian community, and I can only speak for Bay Mills, and defer to counsel for the Sault Tribe on the other matters, Port Huron was identified by then Governor Engler as a location that he would like to see gaming be available. So we looked at that area closely and found that it would be one in which we were willing to enter into an agreement to accept land in return for the Charlotte Beach property.

Ms. WALKER. Thank you. The situation is similar for the Sault Tribe in that the Governor indicated areas that could use economic development, and looking to the casinos as a source for that purpose. The Sault Tribe has three options for the land acquisition; one is in Romulus. We have been talking about Romulus today, but there are really three options under the bill. One is Romulus, one is Flint, and the other is land in Oswego County.

So there are options for purchasing those. They are in private ownership in this time. But they are areas that, as Ms. Tierney noted, would support economic development and that the tribe is examining for the propriety of substituting them for the Charlotte Beach land claims.

Mr. JOHNSON. So these are lands in private hands in the State of Michigan; the United States has no particular claim to the property, if you will?

Ms. WALKER. Not at this time.

Mr. JOHNSON. But now in this legislation you would be looking for the United States to ratify an agreement between the Governor and the tribes to settle a Federal claim?

Ms. TIERNEY. There is a Federal law, sir, the Indian Trade and Intercourse Act, which was first enacted by the United States in the early 1800's, the one that we still refer to now was passed in 1834, which specifically prohibits Indian land from being disposed of without the consent of Congress. It is still the law of the country. That is why we are here. We need Congress' consent to relinquish our claim.

Mr. JOHNSON. Relinquish to the Federal Government?

Ms. TIERNEY. To the Charlotte Beach property, that is correct. That is the property we have been talking about earlier that I had indicated had been lost because of tax sales.

Mr. JOHNSON. It is not owned by the Federal Government either, is it?

Ms. TIERNEY. No.

Mr. JOHNSON. Does the Federal Government assert some kind of interest in that property, Mr. Artman?

Mr. ARTMAN. No, we do not.

Mr. JOHNSON. So the Federal Government would simply just ratify an agreement between the State and the private parties and that would then, according to this legislation, automatically entitle the property to a Class III gaming license. Is that what we are talking about here?

Mr. ARTMAN. Under this legislation, that is correct. This would mandate that the United States take into trust this land, and all claims would be relinquished, and according to legislation, gaming could occur on that land.

Mr. CONYERS. Would the gentleman from Georgia yield for a follow-up on his questions?

Mr. JOHNSON. I will.

Mr. CONYERS. How did Governor Engler in his wisdom decide where this casino ought to be located?

Ms. TIERNEY. That is not something I am privy to.

Mr. CONYERS. Well, I mean, Mr. Artman, do you have other instances in your experience where a Governor determines where a casino outside of the reservation itself is located is going to be?

Mr. ARTMAN. There has been precedent with—as mentioned earlier, there has been precedent with regard to taking land into trust, perhaps even through the congressional process, that has resulted in gaming. One such case was with the Seneca in New York, another was Wyandot in Oklahoma and Kansas.

Mr. CONYERS. They weren't hundreds of miles away from the reservation.

Mr. ARTMAN. Arguably, no, they weren't.

Mr. CONYERS. Arguably. I mean they either were or they weren't. I suggest to you that we are looking for some history where a Governor in his wisdom decides that hundreds of miles away from the Indian reservation let's start a casino, ladies and gentlemen. I guess the Indian reservations say who are we to object to the Governor's wisdom. And here we go.

Now we are being asked, as Johnson has brought out, now the government is being asked to retroactively, the Congress, ratify all of this and say look, let's make it legal, let's get this over with, and let's forget the fact that there are several unusual, to me, unusual factors about this matter.

Is that too disingenuous? Isn't that what we are doing here today? That is what is proposed to be done by the Congress. Right?

Ms. WALKER. Mr. Chairman, may I comment, please? With respect to other gaming facilities in which a Governor has agreed to a distance location, I think the good example is the Forest County Potawatomi facility in Milwaukee, which is over 200 miles away from the reservation lands. This exists. This has happened. There are several situations in which this occurs. I think Seneca is another example. They have got a casino in Niagara, which is far away from the town of Salamanca.

Mr. CONYERS. This is a regular process.

Ms. WALKER. For approval of a land claim?

Mr. CONYERS. Look, this is either irregular or ordinary.

Ms. WALKER. I think it is regular.

Mr. CONYERS. In each of those cases I would just like to know, since the overwhelming majority of casinos are granted for the immediate benefit of the reservations and communities of the Indian tribes, but now it seems like somewhere along the line, historically, if you are right, people are saying well, and in those two instances I would want to know why did they pick hundreds of miles away from the casino.

Mr. Artman.

Mr. ARTMAN. In the case just brought up, the Forest County Potawatomi, that, and along with two others, the Forest County Potawatomi was actually the longest of the two-part determination process. But that doesn't set a precedent for what is occurring here today. The Forest County Potawatomi, along with two others, we have only approved three two-part determinations, all went through the Indian Gaming Regulatory Act two-part determination. It went through the Secretary approval process, in which we reviewed it, analyzed it under certain conditions, and then the State approved it as well.

Now certainly the State may have played a role in placing that particular gaming location in that area, but that was also done through the Federal law at the administrative level and not here at Congress. What we are concerned about is the precedent set here in Congress for circumventing that administrative process as set forth in IGRA.

Mr. CONYERS. What Congressman Johnson and I are trying to figure out, going back to the Michigan cases, why did they pick these two plots of land to do a casino? He put on a blindfold and went to the map and stuck a pin in and said aha, Sault or Port Huron; another blindfold, Romulus, Michigan. Is that how it happened?

Ms. TIERNEY. I don't believe so.

Mr. CONYERS. I don't think so either.

Ms. TIERNEY. I believe the best place to look perhaps is the testimony in support of this legislation that was done in 2002 before the Senate Indian Affairs Committee in which a statement was presented in testimony given by Lance Boldrey, the Deputy Legal Counsel for Governor Engler.

Mr. CONYERS. But what did he say?

Ms. TIERNEY. I will have to defer to the text itself. I believe that there was an explanation as to the process by which the Governor agreed to those locations.

Mr. CONYERS. Okay.

Mr. Johnson, should I invite you for any conclusion before we turn to our colleague from California?

Mr. JOHNSON. I think you have clarified sufficiently. I will yield back the remainder of my time.

Mr. CONYERS. Thank you.

Darrell Issa.

Mr. ISSA. Thank you, Mr. Chairman. You have gone a long way toward setting the record straight. There is nobody on this Committee I think that represents more native American tribes and bands than I do. There is nobody on this Committee I think that would begin to be as dedicated to tribal sovereignty as I am. I don't say that out of brag, I say that because I have some of the best

examples of Native Americans who, throughout the Spanish period, were mistreated, nearly exterminated, taken off their aboriginal lands, taken to missions, where three-quarters of them died.

Those who are left today in California have returned to their aboriginal lands. They have sought over the last 100 years to regain some small portion of the reins that they operated under. But in every case, the land in trust that they enjoy today, small or large, represents some portion of the land that they can lay a legitimate claim to, going back a long time, actually long before our records.

The Constitution says that we, the Congress, have the right to regulate commerce with foreign nations and among the several States and with Indian tribes. Now, it doesn't say that Indian tribes are American Indians. And there is a reason for that.

I want to get to a number of questions. We don't have American Indians, we have Indians of aboriginal regions. They have independent rights in those regions. They do not have rights beyond those regions. I think that is well thought of in the Constitution.

We have made exceptions. Certainly, the Trail of Tears created a situation in which we took people's historic areas and now thousands of them are living in Oklahoma and other States. We made allowances for that. We made allowances for our sins of the past, not for a selection in order to promote Indian gaming.

Let me go through a couple of things. First of all, Mr. Artman, they have made a selection of land. They have not bought it in fee simple. Instead, they have made an agreement to purchase it. In your opinion, aren't they making the agreement to purchase that is really not contingent on land in trust, it is really contingent on Indian gaming, it is really contingent on the value added? They have offered enough money for land to be purchased not for tribal purposes, but directly for casino purposes, and that is the reason they haven't bought it in fee simple today, isn't that true?

Mr. ARTMAN. Not having seen the actual documents, the option document for the land, I can't speculate as to what the purposes are. This is something though, a practice that we often times see with regard to land in trust, that the option isn't exercised until the very last minute going into trust. Often times in those same situations those are related to gaming. And the condition precedent for gaming is that the land be in trust.

Mr. ISSA. In fact, land in trust is a procedure we do to take off the tax roll and into trust as a Federal asset on behalf of the tribe. We do that because of tribal purposes. Isn't that correct?

Mr. ARTMAN. Yes. By taking it into trust, certain privileges and immunities are accorded to that land.

Mr. ISSA. Didn't we pass the IGRA, the Indian Gaming Regulatory Act, anticipating that this would be one of many of a portfolio of activities that tribes on their reservations could do? The act in no way, shape, or form said go out and buy land. The act intended and required that it be their land in order to have a casino on it, land in trust. Even if they already had fee land that they owned, that was never available for gaming. Isn't that correct?

Mr. ARTMAN. The Indian Gaming Regulatory Act essentially frames an already existent right in States where tribes are located if there is Class III gaming already occurring in those States.

Mr. ISSA. So, in a nutshell, this is reservation shopping in absolute terms, correct? Is there anyone there that can dispute that this doesn't look, act and smell like reservation shopping for the purpose of Indian gaming? Even the others on the panel. Let's be honest, this is a selective selection not for purposes of Indian housing, not for a tribal health center; this is for an operation that in fact is a casino.

Is anyone going to try to sit here, under oath, we are under oath, doesn't matter, lying to Congress is a felony, anyone going to tell me that is not true, or they believe by some convincing evidence that it is not true?

Thank you. That is an important point to get across.

Ms. WALKER. I would like to respond, if I could. Thank you.

Mr. ISSA. Just to that question.

Ms. WALKER. Yes, sir.

Mr. ISSA. Do you say, yes or no, that this land is for some other significant purpose besides the primary purpose of operating a casino for benefit to the tribe? Yes or no.

Ms. WALKER. Yes, it is.

Mr. ISSA. What is that other purpose?

Ms. WALKER. The other purpose is to provide revenues to allow the tribe to support itself.

Mr. ISSA. Sorry. I asked the question. The correct answer is no other purpose than to provide revenue to the tribe. It is a casino to provide revenue to the tribe.

Ms. WALKER. It is a casino to provide revenue to the tribe.

Mr. ISSA. Okay, thank you. I have got very little time. The Chairman has been indulgent already, and there is a lot more to cover because this is an important constitutional issue and it is one that I think this Committee has to take very seriously.

I represent—my State represents over 100 Indian tribes. We will just talk about Jamul, an Indian tribe near the Mexican border. They have less than four acres. They were driven nearly into extinction.

Is there any reason, Mr. Artman, today that the Jamul Tribe, sitting near the Mexican border, in a rural, poor area, with only four acres at this time, should not be able to bid and buy this land against that tribe? It is 1,500 miles, 2,000 miles. Is there any reason that this tribe is any more entitled to go 300 miles than my very poor Jamul Indians or my La Jolla Indians, neither one of whom have a location convenient for casino gaming and both of whom would benefit tremendously by this opportunity?

Mr. Artman.

Mr. ARTMAN. I think if you look at the Indiana Reorganization Act and 151 regulations, clearly you are going off reservation to do something at this point. As I stated in a memo on January 3 to our regional director in our Office of Indian Gaming, we need to, by the mandates of the regulations that have been on the books for decades, give a greater scrutiny to any desire to move off reservation, and the further you go, the greater the scrutiny.

Now if Jamul wanted to move to Charlotte Beach, I think certainly we would give that a lot of scrutiny, as we would anyone that would want to move 300 miles.

Mr. ISSA. Let's be a little more close in then. The Jamul Indians or the La Jolla Indians only have to go 30 or 40 miles to get to some very profitable casino sites that are already operating. Thirty or forty miles. If we allow this land in trust for the purpose of gaining revenue through casino gaming to occur 250, 300 miles away outside of an area that if the tribes were all still in tact the neighboring tribe would not let them in, not beyond maybe a meal. They would not be allowed to move in and take over land.

If we allow it, is there any reason that we wouldn't have to essentially have a domino effect that every other poor tribe wanting revenue would be able to select downtown Los Angeles, downtown San Francisco, Dallas, Houston, any other city that was, let's say, within 250 miles? Is there any basis that somehow this tribe, these two tribes have any more entitlement than hundreds of tribes around the country who do not happen to have the ideal gaming location but do have a gaming location within 250 or 300 miles?

Mr. ARTMAN. I think you have hit upon one of our biggest concerns when we were developing the January memo, in that you are opening it up greatly for any other tribe to go great distances. If you allow one tribe to go a great distance, then you do begin to open it up for all tribes to be able to consider it.

Certainly, there is going to be that opportunity to have a greater market elsewhere. When do you stop, what are the limitations. These are the things we consider all the time.

Mr. ISSA. I am going to ask one more question.

Mr. Artman, it is a little outside of your direct knowledge, but I think you are the most appropriate to answer this, and I think the Chairman would appreciate this. We also sit together on an antitrust task force. We are very cognizant on this Committee that another Committee regulates commerce, but we deal with whether or not government or private enterprise operates in a monopolistic way.

If we allow opportunistic travel outside of reasonable

aboriginal territory, reasonable historic tribal lands, if we allow it to a group of Americans; in other words, we say well, because they are sovereign, we are going to let them make a deal with the State, not the Federal Government, deal with the State, and they are going to make these moves for purposes of putting casinos up, why in the world wouldn't—and I know Shelly Berkley was here a minute ago, and she is not a neutral, and I am, I don't happen to have private casinos in my district—why in the world wouldn't Harrah's and all the other major casino operators be able to cry foul, to say that in fact they should be able to put up right next door and around these reservations competing casinos; in other words, have virtually unfettered ability to compete, if in fact we are going to allow other Americans, and they may be the first Americans, and we do have a special obligation, but once we give up that special relationship that comes from their aboriginal claims and we simply say well, it's good for your people to do it and it is going to be somehow good for the economy, once we do that, why wouldn't this Committee consider that we have no right to allow the States to give to the Indians and keep private enterprise out, once we lose the justification of their unique relationship with this government?

Mr. ARTMAN. I think one of the large differences between Harrah's and any Indian tribe is the fact that the Indian tribe is a government, and inherent with the government rights comes a number of rights and responsibilities. One is the ability to engage in gaming similar to the State that it may be located in that does Class III. There is that limitation.

Mr. ISSA. But there is no State in the Union that operates Class III gaming. No State. They simply allow private enterprise to do it, and that is where the right comes from. I just want to make sure we understand.

Mr. ARTMAN. A lot of these are considered Class III. That is what creates that basis for many tribes. Looking at it from the governmental perspective, and this may help to answer a question, and you are right, I am not an antitrust expert, but one of the things we focus on, one of the concerns we have is the jurisdiction is exercised on the reservation, and that is the highest exercise of jurisdiction.

Mr. ISSA. Here, we are asked to create a reservation to create sovereignty, not in fact to codify a sovereignty that was taken away. This is not tribal land and is not being put into trust for purposes of being tribal land, it is being put into trust for purposes of being a casino.

Mr. ARTMAN. That is why we examine in that process very carefully what it will be used for, how far away it is from the reservation. That is why we are asking those critical questions, because we don't want to dilute the exercise of sovereignty for that tribe. That is a very important cornerstone.

Mr. ISSA. Mr. Artman, I am going to yield back after one last question to the Chair.

In your opinion, this does not pass the sniff test of

aboriginal tribal land, or the next closest reasonable thing, and therefore putting this into trust would not serve the legitimate sovereign rights of these Native Americans, these first citizens. Whether or not they go into casinos isn't the point. The point is this is not an appropriate tribal land, and it is not the closest land to their aboriginal legitimate claim, is it?

Mr. ARTMAN. We haven't had the opportunity to look at those documents because this bill and the prior court actions at the State level haven't given the United States the ability to engage in that process. Our issues, our concerns with this legislation are in the process. It doesn't allow it to go through the 151 process in which we look at those things, nor does it allow the compacts to go through the IGRA process also, where we would look at those things.

Mr. ISSA. Thank you, Madam Chair. I hope we have made the case that we do need to allow the regular order of this process in order to get the facts. I yield.

Ms. JACKSON LEE. [presiding]. Let me thank the witnesses as well. We have a vote on the floor. So I will quickly pose some questions, and forgive me if they have been asked and answered. I will ask for witnesses to have very succinct answers.

Chief Cantu, just help me, does your tribe own any casinos at this time?

Chief CANTU. Yes, we do. We own the Soaring Eagle Casino and Resort.

Ms. JACKSON LEE. Tell me, what do you think is the sense of the commitment of the compacts and the trust? Why do you feel that the legislation before us pierces that structure that has been put in place?

Chief CANTU. Well, I think that, with Mr. Johnson's question, that the compact requires it, the type of off-reservation gaming be approved by other tribes. The tribe agrees with Mr. Artman here that the concerns are bypassing the requirements of the compact.

Ms. JACKSON LEE. Which is that other tribes have to agree, and the tribes that are before us are asking that casinos be put off their reservations or their sites?

Chief CANTU. That is correct. Our ancestral lands.

Ms. JACKSON LEE. On your ancestral lands.

Chief CANTU. That is correct.

Ms. JACKSON LEE. I guess I am confused, Ms. Walker and Ms. Tierney. Why would you be doing this? I want to be open minded as well, but what is the basis behind at least challenging the compact?

Ms. WALKER. We don't believe we are challenging the compact. We believe what we are doing is consistent with the compact, and that is the nature of the testimony given before the Natural Resources Committee as well.

Ms. JACKSON LEE. Which says?

Ms. WALKER. That this is entirely consistent with the compact. The compact does not limit the number of casinos that individual tribes may have, and section 9 of the compact that the Governor chose not to enforce in the 2002 settlement agreements is a revenue-sharing provision.

Ms. JACKSON LEE. What about the requirement of having the other tribes agree to placement?

Ms. TIERNEY. Section 9 of the 1993 compacts, which is one that both Bay Mills and the Sault Ste. Marie Tribes signed with the State and approved by the Secretary, does not require approval of the other tribes; it simply requires a revenue-sharing if it is a two-part determination fee-to-trust request under section 20 of the Indian Gaming Regulatory Act.

Ms. JACKSON LEE. You are prepared to share revenue?

Ms. TIERNEY. We agree with the State that section 9 of the compact is not implicated by our land settlement agreement with the State.

Ms. JACKSON LEE. But are you prepared to share revenue?

Ms. TIERNEY. No, ma'am. It is not required.

Ms. JACKSON LEE. Are you in fact suggesting that casinos would be on Chief Cantu's land?

Ms. TIERNEY. No, I am not. In fact, we have submitted testimony and documents to the National Resources Committee, which is also in my submission here today, which indicates that the aboriginal claims of the Saginaw Chippewa Tribe to the Port Huron area are not what Mr. Cantu has indicated.

Ms. JACKSON LEE. Let me ask Mr. Artman very quickly. I am going to call this hearing to an end. Can you explain how the U.S. would be liable for supporting these bills?

Mr. Artman.

Mr. ARTMAN. If the land were taken into trust without going through the environmental review process as mandated under NEPA, we may be taking land into trust that comes with environmental liabilities. At that point, we would be accepting those liabilities once it goes into trust.

Ms. JACKSON LEE. So whatever liabilities would occur, the U.S. Government would have to be responsible for?

Mr. ARTMAN. That is correct. The way the bill is written, it doesn't give us the opportunity to afford those kind of environmental reviews.

Ms. JACKSON LEE. Let me thank you very much, all witnesses, for your testimony.

Without objection, Members will have 1 week to submit any additional written questions, for which we will forward and ask that you answer as promptly as you can to be made part of the record. Without objection, the record will remain open for 1 week for the submission of any other additional materials.

The hearing has helped enlighten the many procedural irregularities involved in these two land deals. Strong concerns have been raised about the shortcuts that hack through important legal steps that were established to give all voices a chance to be heard and to give all issues their due consideration and about the potentially indiscriminate spread of casino gaming into all corners of our country if a precedent like this is allowed to gain a foothold.

The concerns of the Chairman about these land deals and the two bills that would bless them for casinos, in disregard of established Federal legal protections and in defiance of the express wishes of Michigan voters, have only increased this morning. The Committee will consider the next appropriate steps accordingly. We thank the witnesses all. You have all been heard.

With that, the hearing is now adjourned.

[Whereupon, at 1:40 p.m., the Subcommittee was adjourned.]